Supreme Court of the United States

OCTOBER TERM, 1944

No. 86

REGAL KNITWEAR COMPANY, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MAY 15, 1944.

CERTIORARI GRANTED OCTOBER 9, 1944.

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Board's Exhibits:

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IN THE

United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

REGAL KNITWEAR CO., INC.,

Respondent.

Certificate of the National Labor Relations Board.

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board—Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled, "In the Matter of Regal Knitwear Co., Inc., and Wholesale & Warehouse Workers Union, Local 65, C.I.O.," the same being Case No. C-2549 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Stenographic transcript of testimony held before Peter F. Ward, Trial Examiner for the National Labor Relations Board, together with all exhibits introduced in evidence.

Certificate of the National Labor Relations Board.

4 (2) Copy of Trial Examiner Ward's Intermediate Report, dated March 9, 1943.

(3) Copy of order transferring case to the National Labor Relations Board, dated March 11, 1943.

(4) Copy of respondent's request for permission to present oral argument, dated March 19, 1943.

(5) Copy of telegram, dated March 25, 1943, granting all parties an extension of time to file exceptions and brief.

(6) Copy of respondent's exceptions to the Intermediate Report, dated April 1, 1943.

5

(7) Copy of notice of hearing for purpose of oral argument, dated April 7, 1943.

(8) Copy of list of appearances at oral argument held before the Board on April 27, 1943.

(9) Copy of Decision and Order issued by the National Labor Relations Board, May 7, 1943, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

6 IN TESTIMONY WHEREOF the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 16th day of July, 1943.

(Seal)

JOHN E. LAWYER,
Chief, Order Section,
National Labor Relations Board.

(1)

Stenographic Transcript of Testimony at Hearing of February 4, 1943.

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION.

In the Matter of REGAL KNITWEAR CO. INC. and WHOLESALE & WAREHOUSE WORKERS UNION, LOCAL 65, C.I.O.	Case No. II-C-4511

United States Court House, Room 1801, Foley Square, New York, New York.

Thursday, February 4, 1943.

The above-entitled matter came on for hearing, pursuant to notice, at 10:30 o'clock a. m.

Before: Peter F. Ward, Trial Examiner.

Appearances:

Cyril W. O'Gorman, Esq., 120 Wall Street, New York, New York, appearing on behalf of the National Labor Relations Board.

William W. Conrad, Esq., 280 Madison Avenue, New York, New York, attorney for Respondent.

Stenographic Transcript of Testimony at Hearing of February 4, 1943.

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(3)

PROCEEDINGS

Trial Examiner Ward: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Regal Knitwear Co., Inc. and Wholesale & Warehouse Workers Union, Local 65, C.I.O.

The Trial Examiner appearing for the National Labor Relations Board is Peter F. Ward.

11 Counsel will please state all appearances for the record.

Mr. O'Gorman: Cyril W. O'Gorman for the Board.

Mr. Conrad: William W. Conrad for the Regal.

Trial Examiner Ward: The official reporter makes the only official transcript of these proceedings. Citations in briefs or arguments based upon the record, directed to the Trial Examiner or to the Board must cite the official transcript in all references to the record. The Board will not certify any transcript other than the official transcript for use in any court litigation.

It may become necessary to make corrections in the rec-
12 ord during the hearing. If so the party desiring the correction will submit the suggested correction to the other party or parties in writing. When this has received their written approval it will be submitted to the Trial Examiner. In the event the parties are unable to agree upon proposed corrections, the Trial Examiner will then consider motions to correct the record or may upon his own motion order certain corrections made. If the parties have been unable

(4)

to agree upon such corrections before the close of the hear-

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ing but have entered into a stipulation concerning such matters after the close of the hearing but before the transfer of the case to the Board, such stipulations or motions should be addressed to the Trial Examiner in care of the Chief Trial Examiner in Washington. After the transfer of the case to the Board all such communications should be directed to the Board itself, inasmuch as by such transfer to the Board the Trial Examiner's connection with the case ceases.

Since this is a formal hearing we shall maintain the dignity and decorum which usually accompany judicial pro- 14
ceedings.

Concise statements of reasons for motions or objections will be permitted, but the Trial Examiner may go off the record for the purpose of hearing extended argument. Off-the-record discussions or arguments will not be included in the official transcript unless an order to that effect be made by the Trial Examiner, either upon the request of any of the parties or upon his own motion. All requests to go off the record are to be directed to the Trial Examiner and not to the official reporter.

The Trial Examiner will allow an automatic exception 15
to all adverse rulings, and upon appropriate order an objection and exception will be permitted to stand to an entire line of questioning.

Five copies of all pleadings submitted during the hear-

ing are to be filed with the Trial Examiner. All exhibits offered in evidence shall be in duplicate.

At the close of the hearing the parties may if they so request argue orally before the Trial Examiner, or at such

16 time as the Trial Examiner believes that oral argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved, he may request oral argument from the parties and will feel free to discuss with and ask questions of counsel or representatives of the parties with respect to their contentions as to the issues, the facts, and the legal principles involved.

I might say it has been the practice of the Examiner for some six or eight months to require oral argument at the close of the hearing and to include it in the record. And
17 I put you on notice that I expect to do that in this case.

Any party shall be entitled upon request made before the close of the hearing to file a brief with the Trial Examiner, who before closing the hearing will then indicate the time within which from the close of the hearing such brief may be filed. Five copies of such brief shall be directed to the Trial Examiner, in care of the Chief Trial Examiner, in Washington. I make this announcement at this time in order that the parties may schedule their time accordingly.

The Board may proceed.

Mr. O'Gorman: At this time, Mr. Examiner, I offer as
18 (6)
Board's Exhibit 1 the formal papers, consisting of the following documents:

1. Seventh amended charge.

2. Complaint and notice of hearing dated January 19, 1943.

3. Affidavit as to service with original return receipts numbered F-63142, F-63143, F-63144.

4. The answer.

5. Notice designating place of hearing.

19

6. Affidavit as to service, with original return receipts numbered F-63227, F-63228, F-63229.

7. Rules and regulations, series 2.

All are original or else true copies, the originals are designated as such, and certified under the hand and seal of Charles T. Douds, Regional Director, Second Region.

Mr. Conrad: No objection.

Trial Examiner Ward: They will be received.

(The documents referred to were marked Board's Exhibit No. 1 in evidence.)

20

Mr. O'Gorman: I will offer as Board's Exhibit 2 a stipulation covering the commerce data involved in this matter, as well as an admission that the Wholesale & Warehouse Workers Union, Local 65, C.I.O., is a labor organization within the meaning of the National Labor Relations Act. That stipulation was entered into by and between the Regal Knitwear Co., Inc., signed by Julius Israel, Sec-

retary, and Cyril W. O'Gorman, attorney for the National Labor Relations Board.

Any objections, Mr. Conrad?

21

Mr. Conrad: No.

Trial Examiner Ward: Board's Exhibit No. 2 will be received.

(The documents referred to were marked Board's Exhibit No. 2 in evidence.)

Mr. O'Gorman: At this time, Mr. Examiner, I move to amend the complaint by eliminating the word "manufacture" and the comma following it from paragraph 2 of the complaint. It appears on the first page of the complaint on the second line from the bottom. So that the complaint

22 will read, among other things: "engaged at said New York plant, in the sale and distribution of knit goods and related products."

Mr. Conrad?

Mr. Conrad: I have no objection.

Trial Examiner Ward: The amendment will be allowed.

Mr. O'Gorman: Mr. Conrad, may we stipulate at this time that Mr. Julius Israel is Secretary of the Regal Knitwear Co., Inc.?

Mr. Conrad: Yes.

Mr. O'Gorman: Do you so stipulate?

23 Mr. Conrad: Yes.

Trial Examiner Ward: The record will so show.

Mr. O'Gorman: Jean Strackman.

(8)

Trial Examiner Ward: Just a moment. Off the record.

(There was a discussion off the record.)

Trial Examiner Ward: On the record.

You may proceed.

Mr. O'Gorman: Miss Strackman, will you take the stand, please?

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24 JEAN STRACKMAN was thereupon called as a witness by and on behalf of the National Labor Relations Board and, having been first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. O'Gorman) Will you give your full name and address to the reporter, please? A. Jean Strackman, 405 Bristol Street, Brooklyn.

Q. In the year 1942 were you employed by the Regal Knitwear Co.? A. Yes. 25

Q. When did you start in the employ of the Regal Knitwear Co.? A. In 1927.

Q. At what wage did you start? A. $12 per week.

Q. Did you receive any raises from that time on? A. Yes.

Q. Tell us what those raises were and the amounts and when you received them? A. I used to receive a dollar every now and then, and my wages—

(9)

Q. What do you mean by every now and then? A. Well, 26 every second or third year.

Q. Every two or three years you would get a dollar raise? A. Dollar, and then I was making about $15. That was just before the depression I was making $15.

Q. Can you give us the time? Do you mean the depression of '29 or '30, '31? A. Around about '29.

Q. 1929. A. Then during the depression I was cut down to $11, and then—

Mr. Conrad: I object to the word depression. I think we ought to have a more specific date than the depression. 27

The Witness: Well—

Mr. Conrad: Some of us are always in a depression.

Q. (By Mr. O'Gorman) Give us the time as best you can, the year. A. 1929—

Trial Examiner Ward: It is background the Examiner would say, preliminary.

The Witness: About 1932, I believe it was when the NRA we were given an increase to $14. And then after that we—I received increases up until 1942, which I was making $19 a week.

28 Q. (By Mr. O'Gorman) Now let us go back to the years prior to July, 1941. Can you tell us whether or not

(10)

any union attempted to organize the employees of the company? A. Yes, a number of times.

Q. Were any of those organizational drives successful? A. None.

Q. Do you know if any union was attempting to organize the employees in July 1941? A. Yes.

Q. Do you know the name of that union? A. In 1941 the CIO, Local 65.

29 Q. Do you know the full name of that union? A. Wholesale & Warehouse—

Q. Workers Union? A. Workers Union.

Q. Is that right? And that is the charging union in this proceeding? A. That's right.

Q. Did you join the union? A. I did.

Q. Were you active in regard to union activities? A. Not very.

Q. Tell us what you did do, if anything. A. When I came back from my vacation at the end of July 1942 I was —one of the boys asked me to sign a card. He said that a

30 number of workers had already signed and that he was starting a union. So he said he thought it was a good idea,

(11)

so I signed the card and became one of the union members.

Q. Did you attend any meetings? A. I did.

Q. Did you request any other employees to join the union? A. Yes. After that I asked a number of girls to sign cards.

Q. All of that occurred in the latter part of July 1941? A. Yes.

Q. And is that your testimony? 31

Mr. Conrad: I think she testified 1942.

Trial Examiner Ward: And the Examiner understood her to say 1942 in one case.

Q. (By Mr. O'Gorman) You said 1942. Were you correct in that statement? A. That's right, '42.

Q. The summer of 1942?

Trial Examiner Ward: That was just the past summer.

Q. (By Mr. O'Gorman) Or was it 1941? A. We did start in 1941. We did start—

Q. Well, did you join in 1941? A. Yes. 32

Q. And is that the summer vacation you are referring to? A. Of 1941, that's right.

Q. And then you were in error when you mentioned

(12)

1942? A. Yes.

Q. Now, in August of 1941—

Mr. Conrad: Your Honor, I am not going to object to this type of questioning at this time because I think it was purely an error, but I hope Mr. O'Gorman does not make a practice of that type of questioning. I mean the question of testifying for the 33 witness.

Trial Examiner Ward: The Examiner—

The Witness: Well, I forgot we were in '43 now.

Trial Examiner Ward: The Examiner will not object to leading or suggestive questions when the purpose is to get the witness along the lines, but he does prefer to have the witness testify.

Q. (By Mr. O'Gorman) Now, in the summer of 1941 did you have any conversation with Mr. Julius Israel, the secretary of the company? A. Yes.

34 Q. Can you tell us when and where you had the conversation, if any? A. I believe it was in August Mr. Israel asked me if I had signed the union card.

Q. Where did this conversation take place? A. Well, he called me into the office.

Q. All right, continue. A. And I told him—

(13)

Q. Tell us what was said by both Mr. Israel and yourself at that time? A. I told him I had signed a union card, and he asked me why. So I said, well, people want raises, increases in their salaries and vacations, two-week vacations and sick benefits. He says, well, I could give you all
35 that. I says, well, you haven't been giving it. So he says, well, I will. What do you want a union for? And then he sat down and he says give me the names of the people that have signed up. And he says, you won't feel sorry, you'll have a job here as long as you like to work here. So I told him I didn't do those things. And he insisted that I give him the names, and I refused. So he got up and he wanted to choke me. So I started to cry. And he got up and kissed me and he told me that I could go back and work in the show room. I hadn't been working in the show room, but I felt
36 ill that day—

Q. Never mind where you were working. We just want what happened at the time you were in Mr. Israel's office. A. Well, I felt ill and I went into the ladies' room.

Q. Well, now, that is outside the office, is it not? A. That is right.

Q. Let us go back and just remain in the office. Now, have you told us everything that was said by Mr. Israel

(14)

at that time? A. I believe so.

Q. Is that your best recollection at this time? A. Yes. 37

Q. Do you recall Mr. Israel mentioning anything about a grave—

Mr. Conrad: Your Honor, I object to that type of questioning.

Mr. O'Gorman: Mr. Examiner.

Mr. Conrad: That is not even leading. That is suggesting conversations.

Trial Examiner Ward: For the purpose of refreshing a witness' recollection, she may answer that.

Mr. Conrad: I object to it.

Q. (By Mr. O'Gorman) Was anything mentioned, would 38
it refresh your memory if you heard the expression grave of your father? A. Yes, he told me that I should swear on the grave of his father that I won't join up with the union and that I would try to stop some of the girls that had been signing cards.

Q. Now, you stated that Mr. Israel started to choke you? A. That's right.

Q. Will you give us a little more of the details of that choking? A. Well, when I got up to walk out because I told him I wasn't interested in his conversation, I got up. So he jumped up from his chair and grabbed my neck. 39

(15)

Q. With his hands or— A. With his hand.

Q. The crook of his arm? A. With his hand.

Q. Both hands? Or one hand? A. One hand.

Q. One hand? A. And he said, I'm going to choke you, I feel like choking you, or something like that. So I started to cry and then he kissed me. He told me that I should go and work in the show room.

Q. Did you have any conversations with Mr. Israel,

40 Julius Israel, after that occurrence in the year of 1941? A. What is that? I didn't hear.

Q. Did you have any other conversations with Mr. Israel after that occurrence in the year 1941? A. Well, after that Mr. Israel sent one of the girls around asking if we'd want to go to Florida—

Q. Who was the girl? A. One of the girls, Sylvia Abrams, working there. She came around with a slip of paper and asked the names of people that wanted to go to Florida. She said Mr. Israel had told her to get a list of the names. And she asked me. So I told her I couldn't afford that trip. So she— Mr. Israel came to me and told

41

me that he was giving us a car and two weeks pay and that he would send money to Grossinger's, deposit, that's the hotel in Miami, and that we could afford it because it wasn't very expensive in December.

Q. Grossinger's is a hotel? A. That's right.

Q. In Miami? A. Miami Beach.

Q. Miami Beach. Can you tell us when you returned from your vacation in Florida? A. When I returned from my vacation, Mr. Israel called me into the office. He gave me a bond as a Christmas gift on my return, and all along

42 I had been getting—

Q. Just a second. Did you ever receive a bond for a Christmas gift before? A. No, this was the first time. I used to receive six pair of stockings every Christmas. And this year he had given me a bond, $25 defense bond.

Q. Was that the first year he gave so much at Christmas time? A. That's right. That's right.

Q. And all during this time was the union still attempting to organize the shop? A. Yes.

Q. Go on. A. And— 43

Q. Oh, by the way, I believe I forgot to ask you, who

(17)

went to Florida with you? Can you tell us the names of the employees? A. Yes. There was Sylvia Abrams, Mr. and Mrs. Bogad, and there was Mr. Leo Pfeffer.

Q. Any others? A. That's all that were in my car.

Q. Was there another car? A. There was a car I believe after the one I was in. When I—when we got back somebody else went.

Q. You mean there were two sections going to Florida that year? A. That's right. 44

Q. Do you know the names of the other people who went? A. No.

Q. Upon your return to Florida did you continue to attend union meetings? A. I did.

Q. And did you have any further conversations with Mr. Israel, Julius Israel? A. Well, after—I believe it was after a month had passed Mr. Israel called me into the office. He called me on the phone and asked me to see him after working hours. Well, I waited around about an hour and when he finally did see me, I was sitting in the office waiting for him, he says: "I don't know what I'm going 45

(18)

to do with you." So I says I don't understand.

Q. Now, can you give us the time of this conversation? A. I believe it was about six o'clock.

Q. The date? A. Between six and six-thirty.

Q. And the date? A. I don't remember the date. It was on—I believe it was on a Wednesday. I'm not quite sure.

Q. All right, tell us what happened at that time? A.

46 He said, I don't know what I'm going to do with you. I says, well, I don't understand. He says, well, I expect I'll be leaving very soon on a vacation and I can't have you around, I'm afraid to trust you. I said, well, I don't understand what you mean by that. He says, well, you know what's been going on all along about a union, he says. I have a list here, he says, of names of people that have signed up, and I expect to get rid of quite a few of these people. And he did have a list with the names on them. So I says to him, I don't think that is a very wise thing to do. And he says, oh, I don't know about that. He says,
47 I'm giving you two weeks pay and any time you need any money if you don't get a job in the near future you can

come up and ask me for it. I told him I didn't accept charity.

Trial Examiner Ward: Fix the date of that.

Q. (By Mr. O'Gorman) Can you recall the date that you left the employ of— A. It was March 20th.

Trial Examiner Ward: What year?

The Witness: 1941—1942, March 20, 1942.

Mr. Conrad: Was that the date of the conver-
48 sation or—

The Witness: Yes. Yes, that was the date of the conversation.

Trial Examiner Ward: So I understand, the Examiner understands.

Q. (By Mr. O'Gorman) Was there anything said in that conversation about unions? A. So I—I asked him if I was being fired for union activities. And he says, I'm not firing you, I'm just telling you to go. I says, well, that's being fired; if you're not firing me I'm coming back

tomorrow. He says O. K., then you're fired. He was very angry. So he says to me, I m really sorry to let you go, I really need you, but I can't chance it. And— 49

Q. Did you ask him what he meant by chancing it? A. Yes, he said that he was afraid to have me around because

(20)

I would—he says, people working in a place too long get ideas, and that he realized that I had a few ideas, that didn't fit in with his. So—

Q. Did he mention what those ideas were? A. Well, he did mention union once. He said he had a list of people belonging to the union. 50

Q. Did you see that list? A. I did see the list.

Q. Can you tell us any of the names that appeared on that list? A. Well, I believe he had the name of Herman Bogad, and he did have Leo Pfeffer, and he had the—my name was on it, and Arthur Klein. That's about all I did see.

Q. Did he indicate that list to you when he mentioned it? A. No, he held it.

Q. He held it? A. That's right.

Q. Now, during the time that Local 65 attempted to organize the employees at that company, did you receive any other offers of gifts from Mr. Julius Israel? A. Well, he did give out tickets to shows, whenever we had a meeting. 51

Q. What do you mean by a meeting? A. When we—when the union would call us for meetings, on Saturday

(21)

afternoon, Mr. Israel would make sure that we were given tickets for a show Saturday afternoons so we couldn't attend the meetings.

Mr. Conrad: I object to that type of answer, make sure. I don't know what she means by that.

Mr. O'Gorman: I will consent that the—

52 Mr. Conrad: I move it be stricken.

Mr. O'Gorman: —answer in that form be stricken.

Q. (By Mr. O'Gorman) Now just give us the answer, tell us what happened. If it happened on a Saturday, say so. Tell us when— A. It did. Saturday afternoon Mr. Israel usually would give us tickets to see a show.

Q. For what performance? A. Well, there were a number of shows.

Q. Well, I mean a matinee performance? A. Matinee performance.

53 Q. Or a Monday performance? A. Matinee performance, Saturday matinees.

Q. Were the tickets always for a Saturday matinee? A. Yes, sir.

Q. Now, on what day of the week and at what time did the union usually hold its meetings? A. On Saturday afternoons.

Q. Was it the same time that the matinees were usually held? A. That's right.

(22)

54 Q. Now, previous to the time that the unions were attempting to organize the plant, the employees at that company, had Mr. Israel ever handed out theatre tickets? A. Not that I know of.

Q. And at Christmas time when unions were not attempting to organize employees had he ever given out anything more than stockings? A. Not to the girls.

Q. To female employees.

Trial Examiner Ward: To whom were the tickets given, all of the employees?

The Witness: Well, a number of people and anybody that could go, he'd ask them if they could spare the afternoon, told them that it was a very good show and he thinks they ought to see it. 55

Trial Examiner Ward: Any of the employees working, they could go with the tickets?

The Witness: That's right.

Q. (By Mr. O'Gorman) And is Mr. Julius Israel in this room now? A. Yes, sir.

Q. Would you mind indicating Julius Israel to us? A. That's Mr. Israel (indicating).

Mr. O'Gorman: Indicating a gentleman seated to the rear of Mr. Conrad. 56

(23)

Trial Examiner Ward: I assume that.

Mr. O'Gorman: I think that is all.

CROSS EXAMINATION.

Q. (By Mr. Conrad) Miss Strackman, you realize you are under oath here, don't you? A. That's right.

Q. And you know that any perjury you may commit you may be prosecuted for; you know that? A. That's right.

Q. Did you see Mr. O'Gorman regarding this matter? A. Yes, sir. 57

Q. And how many times have you seen him? A. Just once.

Q. And when was that? A. Saturday.

Q. This past Saturday? A. Saturday afternoon.

Q. And did you go over this testimony with him? A. Yes, sir.

Q. Who was present there besides you and Mr. O'Gorman? A. Mr. O'Gorman and myself, that's all.

Q. No one else? A. No.

58 Q. Had you previously seen someone else at the National Labor Relations Board regarding this matter? A

(24)

Yes, sir.

Q. Do you know who that was? A. Mr. Miller.

Q. Wallace Miller? A. That's right.

Q. And how many times had you seen him regarding this matter? A. Uh—once.

Q. Are you sure of that? A. Yes. I think so.

Q. And did you go over all the facts in the matter with him? A. Yes.

59 Q. And who was present at that meeting besides you and Mr. Miller? A. He did have a young man that took down notes.

Q. Are you sure that no one representing the union was present at that meeting with Mr. Miller?

Mr. O'Gorman: I object, Mr. Examiner. I do not see the materiality whether—

Mr. Conrad: I think it is very proper.

Mr. O'Gorman: —anybody was present or not.

Trial Examiner Ward: Overruled.

The Witness: Well, when I did come down the

60 first time we were called to the Labor Board, we had

(25)

—there were a number of people. There was Arthur Klein, myself and Harold Brody, the organizer of Local 65; and Mr. Miller just took one at a time. They had to wait outside.

Q. (By Mr. Conrad) Was there another time that you had seen Mr. Miller? A. That was the first time.

Q. In other words, when you said you saw Mr. Miller only once, you were mistaken? A. Well, we were in a

clique the first time, but I—you asked if I saw him alone. I said once. 61

Q. How many times did you see him in company with someone else? A. Well, once with the crowd and once alone.

Q. And by the crowd you mean organizers of the union? A. That's right.

Q. And Arthur Klein; is that right? A. Arthur Klein.

Q. Now, besides Mr. Brody, did you have any conversations with anyone else at the union regarding this case and the facts therein? A. No. Well, I just had Mr. Harold Brody; he was the organizer.

Q. Was anyone else present at the time you talked with Brody? That's at the union headquarters, isn't it? A. What's that? 62

(26)

Q. These conversations took place at the union headquarters? A. That's right.

Q. How many such conversations did you have regarding this case? A. I can't remember those things.

Q. Well, then, many of them; is that right? A. I believe so.

Q. And who was present at these conferences besides Mr. Brody? A. Well, the union officials were always there. 63

Q. Well, who? Mr. Osman? A. I'm sorry, I don't remember their names.

Q. Could it have been Mr. Osman? A. I'm not familiar with the names of the people down at the union.

Q. In other words, there were several union officials present; is that right? A. Yes.

Q. And did you go over the facts as you were going to testify or as you did testify today? A. I just told them

64 what I knew. I didn't go over any facts. I just told them what I knew.

Q. What did they say or any of them say? A. Well, I was sent up to the Labor Board and we—we had the boy there take down the notes.

(26)

Q. Now, Miss Strackman, do you want us to believe that you went into a room with several union organizers—and Mr. Klein was present there too, Arthur Klein? A. That's right.

Q. And that all you did was tell them a story and they
65 said go down to the Labor Board; do you want us to believe that?

Mr. O'Gorman: I object as being argumentative.

Trial Examiner Ward: Sustained.

Q. (By Mr. Conrad) Well, is that true, is that the way it happened? A. I don't know what you mean.

Q. In other words, you told us that you told them what happened and they said, well, go down to the Labor Board; is that what happened? A. Of course we talked it over. I told them my story and—and then I was taken up to the
66 Labor Board.

Q. Now, did any of the union officials tell you what you should say and what you shouldn't say? A. No.

Q. They did not discuss the facts at all? A. No, sir.

Q. In fact none of them said anything except go to the Labor Board; is that right? A. That's right.

(27)

Q. You are sure of that? A. That's right.

Q. Now I want to repeat that because I want to get that very clear. You met with several officials of the union—

now you correct me if I am wrong—at the headquarters of the union, at which Arthur Klein was present. Was anyone else working for Regal present or since working for Regal? A. I don't remember anybody else. 67

Q. And you met many times with the union? A. That's right.

Q. That is what you testified to. And every time you met you told them the facts and they said go down to the Labor Board; now, that's what you want us to believe, is that right? A. That's right.

Q. Now, you are sure of that? Now, how many times would you consider many? Was it twenty times? A. That I was down at the union? 68

Q. Yes, regarding this case? A. Well, I—I didn't exactly go just for the case.

Q. Well, but you talked about the case? A. That's right.

Q. How many times? Would you say fifteen times? A. I don't know. I didn't stop to count them.

Q. Could it have been fifteen times? A. I don't know.

(28)

Q. All right. Anyway, it was more than ten times, would you say that? A. That I discussed the case? 69

Q. Yes. A. No, we discussed it just in the very beginning and I was sent up to the Labor Board and that was about all. We didn't discuss the case any more.

Q. In other words, since that very beginning time at which they told you to go down to the Labor Board, at which no one said anything else, is that right, excepting yourself, you never discussed any of the facts in this case with anyone representing the union? A. After that, no.

Q. Mr. Brody? A. We didn't discuss it.

70 Q. Mr. Arthur Klein? A. I was working. I didn't have time to go down and discuss anything any more. The only time I did go down was when I had meetings, I mean.

Q. Where were you working then? A. A defense plant.

Q. How long have you been working there? A. Eleven months.

Q. Where did you work before the defense plant? A. At Regal Knitting.

(29)

Q. From the Regal Knitting you went right to the
71 defense plant? A. A week later.

Q. A week later. And how much money are you receiving at the defense plant?

Mr. O'Gorman: I object.

Mr. Conrad: I think it is proper. It is the very essence of the case, your Honor.

Q. (By Mr. Conrad) Well, are you getting more than you got at Regal? I will put it that way.

Mr. O'Gorman: Objection.

Trial Examiner Ward: Off the record a moment.

(There was a discussion off the record.)

72 Trial Examiner Ward: On the record.

Where an issue concerning back pay is raised the Examiner states on the record that for the purpose of the case in so far as reinstatement of employees is concerned, the fact that substantially equivalent employment has been obtained will be assumed.

Mr. Conrad: I see. All right.

Trial Examiner Ward: Off the record.

(There was a discussion off the record.)

Trial Examiner Ward: On the record.

Q. (By Mr. Conrad) You said before, Miss Strackman, 73
that prior to July 1941 there were other unions trying to

(30)

organize these premises; is that right? A. That's right.

Q. Do you know the names of any of these unions? A. Well, I believe in the beginning it was called Local 99. I'm not quite sure.

Q. Do you know anybody connected with that union? A. No.

Q. When was that, that that union tried to organize the place? A. I believe it was in 1928.

Q. Is that the only other union that you know that 74
attempted to organize the place? A. That's right.

Q. So when you said many other unions, you only meant one other union? I think you said many other unions. A. I don't recall, but it was just one other and Local 65.

Q. So from 1928 until 1941 no other union tried to organize this place; is that right? A. That's right.

Q. Now, in 1928 did you become a member of the union, of 99? A. Yes.

Q. Did Israel try to choke you? A. Well, he wasn't aware that I was, that I had signed with them. He did fire some people, though, I remember. 75

(31)

Q. You mean at that time? A. At the time.

Q. Now, how do you know? Did you hear him fire them? A. Well, I was told.

Q. Told by whom? A. By the people that were fired.

Q. What did they tell you? First give me the names. A. Well, I don't remember their second name, but I remember there was a boy by the name of Sid. He was fired because of union activities, and there was Anna Vinick, she was fired too.

76 Q. And that was in 1928? A. I don't remember when she was fired, but I remember she was fired.

Trial Examiner Ward: This was in 1928?

Mr. Conrad: Yes, that is what she testified, 1928.

Q. (By Mr. Conrad) Now, who told you they were fired because of union activities? A. Well, this Sid told me he was being fired for union activities, because it was going strong then at the time.

Q. Was he active in the union? A. He was very active.

Q. Were you active in the union? A. No.

77 Q. And do you know any others that were discharged

(32)

in 1928? A. A number of people but I don't recall their names. It's been quite a few years.

Q. This Local 65 began organizing this company when, or trying to organize it? A. I beg pardon?

Q. What was the date that 65 began to organize Regal? A. Oh, I don't know the dates.

Q. Give us the approximate date. Was it July 1941? A. Well, CIO started years before that.

Q. When? A. Before 1941.

78 Q. Well, tell us when. I want to know. I don't know. A. Well, I remember a number of years that they have been trying to organize. I don't remember the exact dates.

Q. Can you give us the year? You don't know when 65 started to organize Regal? A. Well, I remember they did try in 1938 and they tried after that, in 1941, I believe, but years before that too.

Q. You mean some of 65? A. CIO.

Q. I mean you don't know whether it was 65 or some other local? A. Well, it was 65.

Q. You are sure of that? Are you sure it was 65? A. I believe so. 79

(33)

Q. That was in 1938? A. '38.

Q. Did you join the union then? A. Yes.

Q. In 1938? A. That's right.

Q. In other words, you have been a member of Local 65 since 1938; is that right? A. No, I wasn't a member. I just signed a card.

Q. Doesn't that make you a member? A. No.

Q. Do you know what makes you a member of 65? A. That's right. When you get a book and you pay your dues and you pay for the book, then you're a member. 80

Q. Have you got your book with you? A. Yes.

Q. Let me see it. A. Should I show it to him?

Mr. O'Gorman: Go ahead.

(The witness handed a document to Mr. Conrad.)

Mr. O'Gorman: Mr. Examiner, at this time I might state that unless the purpose of this examination, continued line of examination is to attack the credibility of the witness, I do not see the materiality of her membership in a union. The question is here not whether or not she was a member. We allege 81

(34)

that she was discharged for union activities or other concerted activities, for the purpose of discouraging membership in the union. My objection is made with the hope we will not be burdening the record unduly.

Trial Examiner Ward: It will be overruled.

Off the record.

(There was a discussion off the record.)

Trial Examiner Ward: On the record.

82 Mr. O'Gorman: Mr. Conrad, after an examination of the card do you wish to stipulate now that it was the Textile Workers Organizing Committee of the Committee for Industrial Organization that was the union that was attempting to organize the workers in the year 1937?

A. No, I would not stipulate that. I don't know anything about it. In fact she said no one at first.

Mr. O'Gorman: She mentioned, as I understand the testimony, the CIO was attempting to organize.

The Witness: That's right.

83 Mr. O'Gorman: And that Textile Workers later merged with Local 65.

Mr. Conrad: I could not stipulate as to that. I mean because I don't know, don't you see?

Mr. O'Gorman: Well, those are the facts in the case, if it will help you any.

Q. (By Mr. Conrad) This book that you showed, this

(35)

union book shows the date of I think April 1942. Did you have a book prior to that book? A. No, this is the only book I had.

84 Q. In other words, you never had any book prior to April 1942? A. That's right.

Q. Does that mean that you never paid any dues prior to April 1942? A. I started paying in April, that's right.

Q. Of this year? A. Of—

Q. 1942? A. 1942.

Q. Now, you testified that Mr. Julius Israel asked you to come to his office for these conversations; is that right? A. That's right.

Q. Now will you describe for the record Mr. Israel's office? A. What is that?

Q. Describe the office, the location and the office. A. Well, the— 85

Q. Let me help you. Isn't it a small office? A. His private office is small.

Q. Now, where is that private office in relation to the large office where the girls are working? A. There's a connecting door.

(36)

Q. In other words, excepting of course the partition it is really the same office; isn't that right? A. No, there are two doors, one door leading into the large office and one door coming in from the outside.

Q. What do you mean, from the outside? You mean from the show—stock room; isn't that right? A. From the hall. There's a hall door. 86

Mr. O'Gorman: Is that what you call a sheriff's exit so you can get out without going through the front office?

The Witness: That's right.

Mr. Conrad: She doesn't know what you are talking about, I do but she doesn't.

Q. (By Mr. Conrad) Isn't it a fact that this office is a little office placed in between the large office where the girls are and the show room—and the stock room? A. No, it's in sort of like a little hall there and there's a door leading into the office. 87

Q. From the little hall? A. That's right.

Q. But it is not a public hall, is it? That hall is in the premises of the Regal; isn't that so? A. That's right.

Q. In other words, you cannot go direct from Mr. Israel's office to the elevator; you would have to go either through the stock room or the large office; is that right?

(37)

88 A. No, it isn't the stock room. It's just a little alcove, a little hall where they have—they have the timeclock there.

Q. That's right. In other words, you would not go out into the public office? A. No.

Q. And how many girls are usually working in that office directly adjoining Mr. Israel's office? A. They have a number of girls. I don't know. I never counted them.

Q. Would you say fifteen, twelve, fifteen? A. About 89 that.

Q. Now, when you were called into Mr. Israel's office were the girls working? A. Yes.

Q. And was the door open or closed? A. Well, when I went into the office—

Mr. O'Gorman: Would you mind telling us on what occasion she was called? What particular occasion are you referring to?

Mr. Conrad: Now, Mr. O'Gorman, I did not interrupt you. I don't think you should. You can ask her later.

90 Trial Examiner Ward: Do you have an objection?

Mr. O'Gorman: I should like to have the question made more specific, so we will know what discussion he is referring to.

(38)

Mr. Conrad: I think he has a right to object, but I do not think he should try to ask me—

Mr. O'Gorman: I am. I am making my objection.

Trial Examiner Ward: Address the Examiner. 91
Proceed.

The Witness: Well,—

Q. (By Mr. Conrad) And— A. I'm sorry.

Q. Did you want to say something? A. No.

Q. You can say it if you wish. A. Well, I was called n on two occasions and one was after working hours and here was only the switchboard operator was in the office. All the others had gone home.

Q. Now, as long as Mr. O'Gorman has helped you out n that, let's proceed upon that. You say the second time, s I recall, you testified was the time that you either quit 92
r he discharged you; isn't that right? A. I didn't quit.

Q. I know you have been thoroughly instructed on that. mean he discharged you; is that right? A. That's right.

Q. That is what you testified to? A. That's right.

Q. Now, the second time was, you say, around six

'clock in the evening; is that right? A. I said between ix and six-thirty. I wasn't quite sure.

Q. And when was the first time, what time of the day? A. About eleven o'clock.

Q. In the morning? A. In the morning. 93

Q. But as I recall, you testified he choked you at the irst hearing or meeting? A. That's right. That was bout eleven o'clock.

Q. Now, are you sure of that? He didn't choke you t six o'clock at night, did he? A. No.

Q. That was at eleven o'clock in the morning? A. That's right.

Q. When all the other workers were working; is that ight? A. That's right.

94 Q. Now you are sure you got that right? A. Yes, sir, that's right.

Q. That is the way you want to testify. Now, were there any marks on your neck when he choked you? A. Well, it wasn't as bad as all that. He just put his hand around my neck. He didn't exactly strangle me.

Q. I should like to have somebody we could show here how he did it. I mean do you mind putting your arm around someone?

Mr. O'Gorman: I think your authority would be Mr. Israel himself.

95 (40)

Mr. Conrad: No. Off the record. She testified that he did that to her, not she to him.

Trial Examiner Ward: On the record. Did you want to go off the record?

Q. (By Mr. Conrad) I should like to know; first you testified, Miss Strackman, that he choked you; now you say he put his arm around your neck. A. I said he put his hand around my neck.

Q. Can you tell me how, show me on your neck? A. Well, he just put it around this way (indicating). He

96 says, I'm going to choke you.

Q. Did he choke you? A. A little.

Q. Did he hurt you? A. No. I got scared.

Q. Did you scream? A. No.

Q. You knew all these people were out there all the time, didn't you? A. Well, I mean I didn't really think he'd do it. He was just a—when Mr. Israel gets angry he's liable to do anything.

Q. Did he ever do anything? A. On a number of occasions he slapped people around.

Q. Did you see him? A. Yes.

(41)

Q. Whom did he slap around? A. I have seen him hit Mr. Greene on the head this way (indicating) many times. I have seen him push people around. 97

Q. You mean playfully, isn't that right? A. Well, it all depends on what you'd call play.

Q. In other words, you play rough? A. Well, I mean when a man is very angry and he pushes somebody, he isn't playing.

Q. Do you think that you are rough with a man when you tap him on the forehead with the back of your hand? A. Not when it leaves marks on your forehead. 98

Q. You would call that force? You say that was with force? A. That's right.

Q. Did Mr. Greene quit? A. No, he didn't quit. He was making a very nice salary and he was used to Mr. Israel.

Q. But you weren't used to Mr. Israel; is that right? A. Well, I knew his habits.

Q. So you really didn't think he meant to choke you, did you? A. No, he didn't exactly mean to choke me. He was just angry.

Q. So when you told Mr. Miller or Mr. Gorman that he attempted to choke you— 99

Mr. O'Gorman: O'Gorman, Mr. Conrad, O'Gorman. Carrying it all these years.

Mr. Conrad: O'Gorman. I don't think there

(42)

should be any question.

Trial Examiner Ward: Off the record.

(There was a discussion off the record.)

Trial Examiner Ward: On the record.

100 Q. (By Mr. Conrad) Now, Miss Strackman, so far you are concerned, you knew that Israel, Mr. Israel had intention of choking you; isn't that so? A. That's rig

Q. But when you reported this to the War Labor Boa both to Mr. Miller and to Mr. O'Gorman, you did tell th that he tried to choke you? A. Well, I was asked—

Mr. O'Gorman: I object to War Labor Board

Q. (By Mr. Conrad) Well, the National Labor Re tions Board? A. Well, I was asked to tell the truth a just what had happened, and that's just what I said.

Q. You said that he tried to choke you? A. Tha

101 right.

Q. You did not tell either Mr. O'Gorman or Mr. Mil that it was done playfully and that you know he did mean it? A. Well, I wouldn't consider it playful.

Q. I see. But you did not tell them that you knew he not mean it, did you? A. Well, I said he was angry and tried to choke me.

(43)

Q. That's right. A. That's my statement.

Q. Now, you testified that you tried to organize place, you tried to help the union? A. That's right.

102 Q. You were not then a member of the union, were yo A. No.

Q. And did you go around any place telling the peo that? A. No, we used to ask the girls downstairs duri lunch hour.

Q. Only? A. That's right.

Q. Never before work or after work; is that righ A. After work, yes.

Q. But never during work? A. Never during worki hours, no.

Q. No word was mentioned by you and other employees about the union during the hours of your employment; is that right? A. That's right. 103

Q. Now, you are sure of that? A. That's right.

Q. Didn't you testify before that certain men had been fired because of union activities? A. That's right.

Q. When did they tell you that they had been dis-

(44)

charged because of union activities? A. In what year do you mean?

Q. Either in 1928 or 1941, any time; you had both years covered. A. Well, it's quite a big place and the people work right alongside of each other and if Mr. Israel would call them into the office, they'd come out and tell us just what had happened. 104

Q. Then you did discuss the union during working hours; isn't that right? A. Well, not exactly the union activities during—during working hours, but what had happened in the office.

Q. And what did— A. They would tell us they were called in and asked if they had signed up with the union and—but we never really went around asking questions about how good the union was or if they wanted to join up then. 105

Q. In other words, you were only talking about the bad things in the firm, not the good things in joining the union, during working hours; is that right? A. I don't know what you mean—

Mr. O'Gorman: I object to the characterization.

Q. (By Mr. Conrad) Well, you say that they would come and tell you that Mr. Israel had called them in and criticised them for joining the union— A. That's right.

106 Q. —or discharged them because of union activities?

(45)

Now, those conversations—Answer louder. A. I wasn't talking.

Q. Those conversations took place during working hours; isn't that what you just said? A. That's right.

Q. But the fact that it would be good to belong to the union or the advantages of belonging to the union, you never discussed during working hours? A. No.

Q. Now, did all the employees of the Regal go to the meetings? A. Not all.

107 Q. Some of them? A. That's right.

Q. How did anyone working for Regal know where to meet you during lunch hour or after working hours? A. Well, we used to meet downstairs in front of the building, and then Mr. Israel had put a stop to that.

Q. Who is we? A. The workers.

Q. Union organizers? A. No, just the workers.

Q. No union organizers were ever there; is that right? A. I haven't seen any.

Q. You never saw Mr. Brody? A. Down near the place? No.

108 Q. You never saw anyone connected with the union?

(46)

A. I never saw anybody down there.

Q. Were you ever told by anyone working there that the union organizers were there? A. That's right.

Q. You were told that? A. Yes.

Q. Who told you? A. The boys would come up and tell me they had just met one of the organizers.

Q. Come up where? A. When they'd come back to work.

Q. And that was while you were working; isn't that right? A. No. 109

Q. You were upstairs already? A. Well, you didn't come up the last minute to go to work. You come up before time and punch your card and sit around the place for about five or ten minutes before you go back to work.

Q. Even during the time that you were busy helping the union organize? A. I was never very active with the union.

Q. Oh, you were not active? A. No.

Q. I understood you to testify that you were active. A. I didn't say I was active.

(47) 110

Q. In other words, you never tried to induce other people to belong to the union? A. I did ask some of the girls if they wanted to sign cards, but I was never active.

Q. Did you go to union meetings? A. Yes.

Q. Saturdays? A. Yes.

Q. Any other days during the week? A. During the week, no.

Q. You talk about these theatre tickets. Isn't it true that Mr. Israel for many years has been giving theatre tickets to employees there? A. Not for many years. 111

Q. Well, for how many years? A. Just around the time we tried to organize in 1941.

Q. Did he give anybody theatre tickets or just those that belonged to the union? A. A number of people.

Q. I mean whether they belonged to the union or not; is that right? A. That's right.

Q. Isn't it a fact that these theatre tickets never were for Saturday afternoon? A. They were for Saturday afternoon.

112 (48)

Q. They were not for during the week? A. I don't remember any during the week.

Q. How many times, how many sets of tickets did you get? A. I received about two or three. I'm not quite sure.

Q. And every one of those were for Saturday afternoon? A. That's right.

Q. You are sure of that? A. That's right.

Trial Examiner Ward: Is the shop working on Saturdays?

113 The Witness: Yes, up until one o'clock.

Q. (By Mr. Conrad) Now, is Mr. Arthur Klein a member of the union? A. That's right.

Q. What were the names of those other men that you saw on that list? A. There was Herman Bogad.

Q. Is he a member of the union? A. Yes.

Q. Anyone else? A. Just a moment. Do you think I should give the names of those people? After all, they're still working there.

Mr. O'Gorman: Mr. Examiner, a question of policy, exclusion of present employees. If it is
114 necessary to test the credibility, I have no objection but—

Mr. Conrad: She is not giving us—excuse me, Mr. O'Gorman. She is not giving us the members of the union. She is giving us the list that she said

(49)

Mr. Israel had as members of the union.

Mr. O'Gorman: Which she described as a list compiled by Mr. Israel showing those who had joined the union.

Mr. Conrad: That's right. She testified on cross examination. 115

Trial Examiner Ward: Proceed.

The Witness: Well, most of those people aren't members of the union anyway.

Q. (By Mr. Conrad) In other words, how many names were on that list? A. Well, there were a number of names. I don't—

Q. About how many? Twenty? A. There were quite a list. I don't just remember how many.

Q. Now give us an approximate number. You are an intelligent girl. A. Well, I mean, after all, I couldn't count the names. It was just a sheet of names. 116

Q. Well, you saw your name, you saw Mr. Bogad's name, Mr. Klein's name? A. That's right.

Q. Are you sure you saw Mr. Klein's name? A. That's right.

Q. Are you sure he was working there at that time? A. He certainly was.

Q. All right. Now, who else? Would you say there

were fifty or twenty others? A. About.

Q. And that is the list that Mr. Israel said were members of the union; is that right? A. Yes. 117

Q. Now, how many of that entire list that you know of have been discharged since that date? A. Well, I don't know. I haven't been in touch—

Q. Or have quit working there? A. I haven't been in touch with any of those people. I don't know exactly who is there now, or how many people have been fired.

Q. But of that list the only ones that you personally know of that are not still working there are Mr. Klein and yourself; isn't that right? A. That's right.

118 Q. And in that whole list you know of no one else that is not now working for Regal so far as you know? A. Well, when I—I went to the Labor Board and we started this I guess that's what put a stop to it.

Mr. Conrad: I move to strike that out as not responsive and—

Mr. O'Gorman: I will consent to it being stricken.

Trial Examiner Ward: Read the answer.

(Last answer read by the Reporter.)

(51)

Trial Examiner Ward: It may be stricken.

119 Q. (By Mr. Conrad) Now, Miss Strackman, how did you happen to go to Mr. Israel's office on the first occasion? A. How did I—

Q. Did he call you in? A. That's right.

Q. Now, did you tell the entire conversation or the substance of it on direct examination here today? A. I don't understand.

Q. Did you relate the substance of the entire conversations that you had with Mr. Israel on both the first and second occasions? A. Did I relate it to whom?

120 Q. Here this morning? A. I believe I did.

Q. Isn't it a fact that you requested the meeting with Mr. Israel to determine why a certain other girl had been discharged? A. That's right, I did. That wasn't in the office, though. That was outside the office.

Q. And isn't it a fact that you told Mr. Israel that the union said that this girl had been discharged because of union activity? A. That's right.

Q. And didn't you in Mr. Israel's presence telephone

(52)

this girl? A. I did.

Q. And didn't she tell you she left because she got a better job? A. No, I spoke to the girl and she said she didn't know what we were talking about. He had given this job to—just for about a week. She was fired after that. And he offered me the same thing, a job in another concern. 121

Q. Who offered you? A. Mr. Israel did.

Q. Mr. Israel does not own any other job, does he, own another firm? A. He said he did. He said he could get me another job and he gave this girl a job, but she was fired the following week.

Q. She told that to you on the telephone? A. No, on the phone she didn't know what we were talking about, because he kept yelling into the phone; How do you like the job? Are you satisfied? And she didn't know what he was talking about. 122

Q. Well, did she say she was dissatisfied with the job? A. And when I met her she told me that she was—

Q. I am talking about this time in the conversation in the room. A. Over the phone?

(53)

Q. Yes. A. Well, she said she was satisfied, but when I met her she was fired the following week. When I met her she told me— 123

Q. I did not ask you about that. If you want to tell it to us of your own volition it is all right.

Trial Examiner Ward: Just a moment. The Examiner does not understand the answer and the interruption before the answer is complete. Go back and read the question.

(Record read by Reporter.)

Trial Examiner Ward: In the room?

124 Mr. Conrad: In other words, she testified to two conversations that she had with Mr. Israel and she stated that Mr. Israel called her in. Now she testifies that she requested an audience with Mr. Israel to discuss this young lady's discharge or quitting.

Trial Examiner Ward: Yes, but the Examiner understands from the witness that that was another occasion rather than the one in the room.

The Witness: That's right.

Mr. O'Gorman: It was outside of the office.

Trial Examiner Ward: And the questioning is
125 preceeding under the assumption that it is the same one.

Mr. Conrad: That is what I am going to try to bring out.

Trial Examiner Ward: It is confusing on the record.

Mr. Conrad: That is right.

Q. (By Mr. Conrad) Now, you say this entire conversa-

(54)

tion took place outside of the office?

Trial Examiner Ward: Which conversation?

126 The Witness: Yes.

Q. (By Mr. Conrad) The one where you were discussing—what is this young lady's name? A. Her name is Sylvia. I don't remember her second name.

Q. You do not remember her second name. Now, you say that entire discussion with Sylvia and Mr. Israel took place outside the office? A. Yes.

Q. Now, you are sure of that? A. That's right.

Q. Is there a telephone outside of the office? A. No, then Mr. Israel asked me to come into the office and he

would call Sylvia and ask her about her job. And he did that. And she said—he asked her if she liked the job, and he didn't give her a chance to say anything. She said yes. He said this is Mr. Israel, do you like your job? And she said yes. So he said, are you satisfied? So she said yes. So he says, well,—he kept yelling and she didn't know what he was talking about. All she kept saying was yes, yes, yes. 127

Q. Was that a third conference that you had with Mr. Israel? A. That was about the first time. I had asked him why Sylvia was fired.

(55)

Q. Now, we are trying to straighten out. Isn't that the first time that you had the conference at eleven o'clock in the morning? A. No, that was not the same day. 128

Q. In other words, this is a third conference you had with Mr. Israel? A. Yes.

Q. Is that right? A. That's right.

Trial Examiner Ward: Does the witness understand that it is in sequence, as one of three or is it—

Mr. Conrad: I guess so.

Trial Examiner Ward: The Examiner gets the impression it would be one of three conversations. 129

Mr. Conrad: That is right. That is the way I get it. I thought it was one of two, but I see it is one of three conferences.

The Witness: That's right.

Q. (By Mr. Conrad) Now, what part of the day was this that you talked with this girl Sylvia? A. I don't recall.

Q. Was it morning or afternoon, before working hours or after or during working hours? A. It was during working hours.

130 Q. During working hours. And during working hours

(56)

you came to Mr. Israel and you demanded to know why this girl was working there; isn't that right? A. That's right.

Q. And you do not even know the girl's second name; is that right? A. I did remember. I don't remember it now.

Q. Who told you to do that? A. Who told me to do what?

Q. To talk to Mr. Israel about this girl during working
131 hours? A. Nobody did.

Q. You mean you did that on your own volition? A. That's right, because I had met the girl and she told me she was fired.

Q. And then you found out she was not fired? A. She was, and then when I spoke to Mr. Israel about her he said that it wasn't true, that she wasn't fired.

Q. In what capacity were you taking this matter up with Mr. Israel? As a union organizer or as a member of the union or on request of the union? A. I don't understand.

Q. Why did you have to talk to Mr. Israel? Why was
132 it your business or affair? A. Well, I had met the girl and she told me that she was fired. So I thought being that I was working there so many years, I figured I'd ask

(57)

him about it.

Q. And this was during the time that the union organizing was pretty hot; is that right? A. That's right.

Q. Do you recall the date that about forty people rushed up the stairs and up to the elevators and ran through the premises? A. No, sir.

Q. Were you there then? A. No. 133

Q. Did you hear about it? A. No.

Q. Nobody ever told you about that? A. No.

Q. Now, you worked there you say for many years; is that right? A. That's right.

Q. How many different positions did you hold in the premises? A. I did a number of things.

Q. Weren't you moved from one place to the other, from one type of work to another? A. That's right.

Q. Didn't Mr. Israel and Mr. Roff or whoever was in charge of this matter call you in and tell you that you were disturbing the people working with you? A. No. 134

(58)

Q. It never happened? A. No, sir.

Q. Why were you changed from one position to the other? A. Because wherever I was needed they would—I was pretty handy, I guess.

Q. Pretty handy. Well, during the time that this union was organizing—and you say that was between '38 and '41; is that right? 1938 to 1941? A. 1938 to 1941, that's right.

Q. I mean those are the three years that either that union or its predecessor—is that putting it right?—or its affiliate— 135

Mr. Conrad: What word do you want me to use, Pete?

Mr. Stein: You're the attorney.

Mr. Conrad: Well, I want to be nice to you.

Mr. Stein: Well, then get your dates right.

Trial Examiner Ward: Address the Examiner.

Q. (By Mr. Conrad) During the period of 1938 to 1941, the three years, that's the time either Local 65 or its

136 immediate predecessor was trying to organize this place quite actively; is that right? A. That's right.

Q. Now, during those three years how many positions did you hold at the Regal Knitwear Company? A. It wasn't just these three years. The last fifteen years

(59)

I have been doing everything there, the fifteen years I have been working there.

Q. What do you mean by everything? A. I did packing, I did trimming, I worked the labeling machine, I picked orders, I worked in the show room. Even in 1927 I recall I did some office work there in Mr. D. H.'s room.

137 Q. You did not care what type of work you did? A. No.

Q. It is all a simple type of work, isn't it? A. I wouldn't call it simple.

Q. I mean it is all a type of work— A. I believe work is pretty hard regardless of what you do.

Q. Yes, I agree with you. All the work that the boys and girls do is practically the same type of work, all hard but all the same type; is that right? A. That's right.

Q. There's no difference between packing or shipping or anything, is there? A. Well, there would be a difference between packing and shipping.

138

Q. Well, you did all kinds of work, you say? A. I did everything.

Q. You shipped, you packed? A. I didn't do any shipping.

(60)

Q. I know, but you packed bundles, did you not? A. Yes.

Q. And you packed cases for shipping, didn't you? A. No, I didn't pack any cases.

Q. You picked orders, didn't you? A. Yes. 139

Q. When I say cases I mean cartons. You packed cartons, didn't you? A. No, we don't pack cartons.

Q. Do you pack it in boxes? A. Boxes, that's right.

Q. And did you do that too? A. Yes.

Q. The boys all do the same type of work? A. Everybody does.

Q. And isn't it a habit of the firm to always interchange the work amongst the girls and boys? A. What do you mean by interchange?

Q. I mean no one particular person does one type of work? A. Well,— 140

Q. They are carried where they are needed; isn't that right? A. No, there are some—I know that I was the only one that worked the labeling machine for years. Nobody else did that.

Q. But I am talking about—you say you did ten or twelve or fifteen different jobs; isn't that right? A. That's right.

(61)

Q. And isn't it a fact that other employees did the same thing; they would take the boys from one department to another as they needed them? A. That's right. 141

Q. There is no question about that, is there? A. No.

Q. And you say neither Mr. Israel nor anyone connected with the management of this firm ever discussed with you the fact that you were telling jokes or kidding along during working hours? A. No.

Q. In other words, until the union activity that you engaged in, and that was beginning in 1938 to 1941, you never had any discussion with anybody about the manner in which you conducted your job in the premises; is that right? A. That is right.

142 Q. Now, during the three years from 1938 to 1941 were you called into the office by Israel or someone else, either D. H. Israel or Roff or Tom, anyone connected with the management, respecting the manner in which you were conducting yourself? A. No.

Q. Not even during the three years? A. I was never called into the office.

Q. And no one ever came to you and told you to keep quiet or moved you because you were kidding along too

(62)

much? A. No.

143 Q. Did you ever tell jokes and laugh and kid along during working hours? A. I may have told a joke. That's natural. But I mean I had nothing to do, nobody ever told me anything.

Q. No one connected with the management? A. No

Q. And during those three years you just kept right along, nobody ever discussed anything, even though you were quite active in organizing for the union; isn't that right? A. Well, I just said I wasn't active, and you insist upon saying I was active.

Q. Well, when this girl was fired you went up and

144 talked with Mr. Israel; isn't that right? A. Well, that was just between the two of us. I wasn't being active in the union.

Q. That's right. And when people would be discharged they would come up and tell you it was for union activity, wouldn't they? Or would they shout it to the entire premises? A. Well, when somebody was discharged everybody would know about it.

Q. Well, you said they came up and told you about it? A. They didn't exactly come to me.

Q. Oh, then when you testified on direct examination 145
that they told you they were fired for union activity--

(63)

A. Just this Sylvia told me she was fired for that.

Q. Outside of Sylvia, all these other men that you testified claimed they were fired for union activity, they didn't tell that to you personally, did they? A. No.

Q. You want to correct your testimony as to that, that they just told it as general knowledge? Is that right? A. That's right.

Q. And you never got it direct from any of these people except this Sylvia? A. That's correct. 146

Q. And that's the one you telephoned from Mr. Israel's office; isn't that right? A. That's right.

Mr. Conrad: That is all.

Trial Examiner Ward: Redirect, if any?

Mr. O'Gorman: Just once over lightly, Mr. Examiner.

RE-DIRECT EXAMINATION:

Q. (By Mr. O'Gorman) Miss Strackman, Mr. Conrad questioned you pertaining to the degree of force that Mr. Israel employed when he attempted to strangle you. And I believe you also stated that you knew he did not mean 147
to kill you. A. That's right.

Q. Even though he said he was going to strangle you. Would you say that he only succeeded in choking you fifty

(64)

percent or a half or let's get the degree? A. Just a little.

Q. Just a little. You do not have much experience in strangulation, do you? A. No.

Q. Now, you also testified that Mr. Israel had punched other employees? A. That's right.

148 Q. Struck them. And I believe you mentioned the name of Mr. Greene; is that right? A. That's right.

Q. And do I understand your testimony correctly when I believe you stated that he was bruised, Mr. Greene was bruised? A. Well, he had red marks on his forehead after Mr. Israel got through with him.

Q. Now, did that Greene incident take place before or after your episode with Mr. Israel? A. No, that was before.

Q. That was before. Now, were there any other employees that you recall—

149 Trial Examiner Ward: Fix the time of it, how long before.

Q. (By Mr. O'Gorman) How long before? A. Well, I don't know. This happens every now and then.

Q. All through the fifteen years that you were employed? A. That is right.

(65)

Q. And did he pick out any certain employees for the object of his affections? A. When he would get angry about anything, he would just shake them or him on the head or push them. I have seen him do that to a number

150 of people.

Q. Did any of the employees become slap-happy? A. Well, I think one boy did want to hit him back. I don't recall his name.

Q. Well, he did not drive anybody insane as a result of the beatings, did he? A. Well, one fellow did have a nervous breakdown, Abe Schwartz. He's the manager there. And I was told by Martin Taube that he was taken away to some rest place a little while because Mr. Israel got him so nervous.

Q. Did Mr. Israel ever strike that employee? A. Well, 151
he used to shake him and yell at him.

Q. Shake him and yell at him. Well, could you tell us the degree of shaking that he employed? A. Well, he would shake them until they'd just about rattle.

Q. Teeth would rattle? A. I didn't say anything about teeth. I just said he'd shake them until they'd about rattle.

Q. And that is the employee who went up in a sanitarium? A. Yes, I believe he was in some rest place. I don't know just where.

(66)

152

Q. Did you ever see him— A. He was very ill for a while.

Q. Very ill. Now, I believe you mentioned that an employee named Sid, whose last name you could not recall, was fired on or about the year 1928 for union activities. Was that your testimony? A. That's right.

Q. And did that employee tell you at the time why he was fired? A. Yes, he said he was fired because of the union.

Q. So that when you told Mr. Conrad, Sylvia told you directly, you overlooked at that time the fact that Sid had 153
also told you directly? A. That's right. Well, it was a number of years difference there.

Mr. O'Gorman: I see. That is all.

RE-CROSS EXAMINATION:

Q. (By Mr. Conrad) You say you saw Mr. Israel hit Mr. Greene? A. Yes, I saw him slap him on the head many times.

Q. Many times. And what did Mr. Greene do? A.

154 Well, Mr. Greene was a very thin man and he'd just back up or he'd push Mr. Israel away.

Q. He liked it? A. He liked it?

(67)

Q. Yes. A. I don't know whether he liked it, but he had to take it because he's a married man with children and supporting a family. He was making a nice salary.

Q. Did you want to continue there after Mr. Israel wanted to choke you? A. Would I want to?

Q. Did you want to? A. Yes, I did.

Q. I mean in spite of the fact that he tried to choke you, you wanted to continue working there? A. That's right.

155 Mr. Conrad: That is all.

The Witness: I needed my job. I—

Mr. Conrad: I did not ask you why.

RE-DIRECT EXAMINATION:

Q. (By Mr. O'Gorman) Mr. Israel never carried a whip? A. No.

Mr. O'Gorman: That is all.

The Witness: Not like Simon Legree.

Trial Examiner Ward: You are excused.

(Witness excused.)

156 We will take a short recess.

(Recess taken.)

Trial Examiner Ward: Proceed.

Mr. O'Gorman: Arthur Klein.

(68)

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ARTHUR KLEIN was thereupon called as a witness by and on behalf of the National Labor Relations Board and, having been first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. O'Gorman) Will you tell us your full name and address? A. Arthur Klein, K-l-e-i-n; 1021 Bryant Avenue, Bronx.

Q. Were you ever employed by the Regal Knitwear Co., Inc.? A. Yes.

158

Q. When did you enter their employ? A. The early part of February 1942.

Q. When you applied for your position were you interviewed by anybody? A. I was interviewed by Mr. Julius Israel.

Q. Will you tell us what took place at that interview, what was said by Mr. Israel, as well as yourself? A. Mr. Israel seated me down, and then asked me, he said to me, what—before I hire you, he said, suppose there was some union activity going on, would you become part of it? So I said if the majority of the shop wanted a union I would want a union. Then he stated, if the majority went off and jumped off a building, would you follow suit? So I said

159

(69)

there was no analogy there. Then before, I said—I said to Mr. Julius Israel that I wouldn't be able to do any hard work.

Q. And was there any discussion about your physical condition at that time? A. I just stated the fact that—I made it a statement that I once had a hernia, that I wouldn't—I wouldn't be able to do hard work. And—

160 Q. Did Mr. Israel say anything in response to that statement? A. Let's see. He mentioned something the fact that it wouldn't be hard.

Q. Did he describe the nature of the work that you would be expected to do? A. No, he didn't describe the nature.

Q. But did he mention it would be light work? A. Said it wouldn't—it wouldn't be heavy work.

Q. He said it would not be heavy work. Now, did you join Local 65 while you were an employee at the company? A. Yes. About three weeks after being employed 161 by the company I went down to the union and spoke the organizer there in regard to organizing Regal Knitting.

Q. How did you learn that Local 65 was interested in the plant? A. I hadn't learned at the time I went down there. I came down with the purpose of meeting somebody

(70)

connecting with it. I had heard talk and gone down there with the intent, with the purpose of wanting to aid in organizing Regal.

Q. All right. Now, did you receive any raises—By the way, will you tell us what your starting salary was? A. 162 I started at $20 a week.

Q. Did you receive any raises? A. Yes, sir. From the early part of April I received $2 increase.

Q. And describe the duties, the nature of your duties when you started work at the company. A. At the beginning I was considered a stock clerk; I would take—

Mr. Conrad: Your Honor, I object to the form of the question.

Trial Examiner Ward: Just state what kind of work you did.

The Witness: I took boxes off a truck that we used to push around the aisles, take as many boxes as I felt I could carry, and put them in bins, sort bins according to numbers and styles, do condensing work from one box to another, where the order pickers had taken some merchandise out, there may have been one left, condensing to another box. 163

Q. (By Mr. O'Gorman) Was there any name for the particular job that you were doing at that time? A. Stock clerk.

(71)

Q. Now, after you received your raise did you ever have any further conversations with Mr. Israel? A. Yes, when I received a raise I felt grateful. I saw Mr. Israel—at that time I was an order picker. I had been promoted. 164

Q. To an order picker? A. An order picker. I was now employed on the third floor, picking bathing suits. And Mr. Israel came down as it was his habit to come down and look around, and I saw him and called him aside and said I want to thank you, Mr. Israel, for giving me the raise. And he said—he walked me over and got me to an aisle, one of the far-away aisles—

Q. When you say he walked you over, did he ask you to go over with him? A. Yes, he asked me to. 165

Q. Well, tell me exactly what took place. A. He asked me to come back here, and I followed him and he opened up his conversation by—

Q. Was that near other employees at the time or further removed from other employees? A. Well, they were within—the distance wasn't too far away, because naturally they had to continue—

Q. Tell us in feet, if you can. A. Continue doing—

(72)

166 one employee might have been nearby and picking his order and then moved away, after he received whatever he came to get.

Q. All right, now tell me what conversation took place at that point, if any. A. All right. Mr. Israel said to me, he looked me straight in the eye and said: I've just spoken to somebody and I have lost faith in them. So I was taken—I said: What do you—what do you mean by a remark like that? Then he looked at me and he says: You know what I mean, in regard to being in the union. So
167 I said: If the implication is that I'm in the union, it's so, I'm definitely a member of the union. And he was somewhat taken back for a moment—

Mr. Conrad: I object to that.

Q. (By Mr. O'Gorman) Never mind your characterization. Just tell what the conversation was.

Trial Examiner Ward: Just tell what he said and what he did.

The Witness: He said to me: You know some day, Arthur, you'll need a friend. You're a married man, you have coming responsibilities. You're
168 going to be a—you're going to become a father. You'll need a friend. You'll need some financial aid, and I'm the one to give it to you.

I've always been good to those who have been

(73)

true and faithful to me. Those who have stuck with me need never worry.

And he offered me a store nearby, the neighborhood, where he would supply me with merchandise.

And he said: If the time should ever come that

you need any financial assistance, I'd only be too glad to give it to you. 169

Q. (By Mr. O'Gorman) Did Mr. Israel know at the time your wife was pregnant? A. Well,—I made it a practice of telling every—in fact at—yes, he did, because I was—when he came back from his vacation, shook hands with everybody, and noted the fact that I looked well, he said that I looked very well, and I mentioned the fact that I am well and I expected—

Q. Was this your first youngster that you were expecting? A. Yes.

Q. And you were the proud expectant daddy? A. Yes. 170

Q. And you advertised that fact? A. Oh, everybody knew about it.

Q. And was it the expected arrival of the baby that Mr. Israel referred to at that time? A. Yes.

Q. I see. Now, was there any conversation at that time pertaining to unions? A. Yes, he stated: Is there any-

(74)

thing I can do for you, anything that I can say that would make you, discourage you from being into the union? So I looked him straight in the eye and I said: There is nothing you can say or do for me that would make me want 171
not to be in the union.

Q. Now, Miss Strackman has testified here to the effect that she had received theatre tickets on Saturday mornings for Saturday matinee performances. Did you receive any theatre tickets while you were employed at Regal Knitwear Co.? A. I refused offers. I may have taken once, if I recall.

Q. Who offered the tickets to you? A. Mr. Julius Israel.

172 Q. Now, can you tell me when the union usually held its meetings during that period of time? A. It was our policy to hold the meetings at two o'clock Saturday, immediately following the completion of our day, which was a half a day Saturday.

Q. Now, do you recall a meeting held in the early part of May by the union? A. I do. I attended every meeting.

Q. I direct your attention to the meeting that was held in the early part of May. Do you recall anything unusual happening that morning? A. Yes. I—

173 Q. Can you tell us what it was?

(75)

Trial Examiner Ward: Happened where?

Q. (By Mr. O'Gorman) At the plant? A. About ten minutes or so before one o'clock I was completing some order, bathing suit order, and Jesse Abrams, who was in charge, said: Arthur, you're wanted on the phone. I went to the phone, I picked up the phone, and some voice that sounded strange to me, I never heard it, said: Are you Arthur Klein? And I said yes. And the party said: Your wife is at the Jewish Memorial Hospital. And hung

174 up before I could question any further.

Q. What did you do after that? A. I went upstairs to the fifth floor, and I went to the telephone girl, Miss Belle Muldew, and I said: Would you please connect me with the Jewish Memorial Hospital? She did, and I spoke to them and I—they told me there was no Mrs. Fay Klein registered there. And then I asked her to get me the doctor, my wife's doctor. And he said that he had just examined her a night ago and that she was well and he—besides, she was registered at the Crotona Park Sanitari-

um, that if she would be suddenly taken he would receive notification immediately, and to his knowledge everything was all right. 175

Q. Had you told anybody other than the telephone operator about that call? A. No, sir.

(76)

Q. Did anybody speak to you after you had made those telephone calls? A. Yes.

Q. Who spoke? A. Yes, there was Mr. Roff.

Q. Who is Mr. Roff? A. Mr. Roff I think is the credit manager, employed by the firm for some time.

Q. Of Regal Knitwear? A. Regal Knit. 176

Q. Was he usually employed in the office? A. Yes, he was—

Q. What did he say to you, if anything? A. He said to me that I should rush home, rush to the hospital, and he repeatedly stated the fact that I should go there.

Q. Now, did you make any further telephone inquiries? A. Yes, I went downstairs and I called up my mother-in-law and I found my wife was there and that she felt good.

Q. Now, on that morning had you been offered any theatre tickets? A. No, but I—

Q. Now just answer my questions. Did you attend the union meeting that afternoon? A. I did. 177

(77)

Q. And did you notice who was present? A. I did.

Q. Were all the people you expected to be there present? A. No.

Q. Who was missing, without mentioning names, if— A. Quite a few people—being quite active I had spoken to a great many people and asking them to attend the meeting, and I had expected quite a number of those that I had made

178 contact with to be present at that particular meeting. Upon arriving at that meeting I found that none of them were there.

Q. Now, did you inquire, make any inquiries of those people when you returned to work the following Monday? A. I definitely, I asked quite a few as to why they had disappointed me after promising me. And they stated they had received tickets for a matinee performance Saturday.

Q. Now, did you have any further conversation with Mr. Julius Israel? A. Yes. Towards the latter part of—

179 towards the latter part of May. It had been the practice of Jesse Abrams, the one in charge, to send one of us up with a truck after the orders had been picked, to go up to the shipping room with the truck. You take the truck up by elevator. And I had come up, and Mr. Julius Israel was in shipping and he told me to stay there and assist. Which I did. This was Friday night, I assisted.

Q. Now will you tell us at this time the nature of the

work in the shipping department? A. The nature of the work is heavy-duty work.

180 Q. What do you do? A. Two negro boys are employed there, big strapping boys. You have to pack and seal quite heavy cartons.

Q. Do you know the weight of those cartons? A. In the hundreds of pounds some of the cartons are.

Q. And does the work require you to lift those cartons? A. Yes, to tie cord around the carton you have to lift it around to tie it.

Q. Do those people— A. And you have to pick it up because it's piled high.

Q. And do the people employed in the shipping department lower those cartons onto trucks? A. They pile them up and there's a trucking concern that comes up for them and takes them down. 181

Q. How much do you weigh, Mr. Klein? A. About 140.

Q. And your height? A. About five seven and a half or five eight.

Q. And tell us what happened after that, if anything. A. Saturday, as was the practice, I went down to the third floor to get my orders for the day to pick. I was told to come up to shipping. I asked on whose orders they told me to go up. Mr. Julius Israel. 182

(79)

Q. Who told you this? A. Jesse Abrams.

Q. And what was Jesse Abrams' position at the company? A. Jesse Abrams was the one in charge of the bathing suits, the one who gave all the order clerks their orders for the day to pick. I went up and I went over to Moe Lawsky, in charge of shipping. And he told me that I would have to work there, that it was on orders. I finished out the Saturday and went to the usual union meeting Saturday. 183

Q. Now I take you back to the day that you were directed by Mr. Julius Israel to remain in the shipping department. Can you tell us whether or not on that day you had less work to do in the order picking department than you had previously? A. No, it was—it was the same. It was still somewhat at the height of the season. It was still—

Q. In the middle of the busy season? A. It was still —yes.

184 Q. I see. How long does that usual busy season continue, if you know? A. Well, I am not one really to judge, but in conversation with the experienced order pickers, it ran till about the end of the June.

Q. That would be over a month? A. After.

(80)

Q. After the time you were transferred? A. Yes.

Q. Now, did anything happen to you while you were employed in the shipping department? A. Yes, sir. The following Monday before I began to work I—I told Moe Lawsky I'll have to speak to Mr. Julius Israel. And I went
185 in and I found him in the show room and there was some boy there, Bob Goldberg. I told him to excuse me, Bob. Mr. Julius Israel told him to stay there. And I spoke and I said, I reminded Mr. Israel of the fact that I had a hernia, that I wouldn't be able, as I had told him, that I couldn't work in shipping, and that if he persisted in making me I would think it was a discriminatory action in his part and would report it to the National Labor Relations Board.

Q. What did he say, if anything? A. He stated he didn't care what I did, that I'd have to work in shipping.

Q. And did you have occasion to go to your doctor at
186 that time? A. Yes, I—quite a heavy carton, that gave me quite a strain and I felt it and that evening I went to my doctor and he examined me and he—and he told—I told him of a terrific pain just about the same mark where I had had the hernia operation and he wrote out a statement

(81)

to the effect that it wouldn't be advisable for me to continue doing that type of work.

Q. What did you do with that statement, if anything? A. I came down and I presented it to Mr. Roff because I couldn't find Mr. Israel in.

Q. Did you ask for Mr. Israel? A. Yes. 187

Q. Where did you make those inquiries? A. In the office.

Q. And of whom? A. In the office.

Q. Of whom did you inquire? A. I asked Mr. Roff I'd like to speak to Mr. Israel, and he—

Q. What were you told? A. He said that he would take care of it, that Mr. Israel wasn't around.

Q. Was Mr. Israel around at that time, if you know? A. To my knowledge, no.

Q. What happened? A. Well, Mr. Roff said: You look very bad. I'd advise you to go home and rest for a 188 day or two. And I had felt that strain and I did go home and I—but I kept making daily inquiries with Mr. Roff—

Q. To whom? A. To Mr. Roff.

(82)

Q. How did you make those inquiries? In person? A. By phone.

Q. By phone? A. Yes.

Q. And the person you spoke to identified himself as Mr. Roff? A. Yes, as Mr. Roff.

Q. You recognized Mr. Roff's voice? A. Yes. 189

Q. And tell us what took place in those conversations? A. I—towards the—the conversation—then I came down. The phone conversation was just in relation that I still felt a little bad. Then I came down at the third day and I said that I was ready to go to work. And Mr. Roff told me that they had taken the matter up with the insurance men, the insurance company, and the insurance company had advised them that they wouldn't—they couldn't employ me doing that type of work. So I—

90 Q. When you say that type of work you mean in the shipping department? A. In the shipping department.

Q. What happened after that? A. I reminded Mr. Roff that I was an order picker, that I done good and he could ask Jesse Abrams or anyone who was credited with the charge of it that I had done a good job as an order picker. And then I told him that I would get a certificate

(83)

from my doctor which would say that I'd be able to do work, any type of work, because being that I was an expectant father the money was important to me. So the
91 doctor gave me a re-examination and found that the pain had gone, that I would be able to do work. Which I presented to Mr. Roff. It seems that he had been taking up the case for Mr. Israel and acting in his behalf on this particular matter.

Q. When did this conversation that you are now referring to take place with Mr. Roff? A. Towards the latter part of May.

Q. Did you request Mr. Roff to permit you to return to work in the shipping department? A. Yes, I did.

Q. Tell us what you said to him and what he said to
92 you, and what happened. A. I gave him the certificate and I told him that I'm ready and willing to do any type of work. And he said that there's only—

Q. Did you ask him to take it up with Mr. Israel? A. Yes, I did.

Q. Well, tell us. A. And he said—he said he would take the matter up and let me know. And then I met him one afternoon and I asked him, well, what was the result of

(84)

your conversation with Mr. Israel? And he said: There's only one word, you're definitely through.

Q. Did he tell you that Mr. Israel had told him that? 193
He said Mr. Israel had told him to tell me that I'm finitely through.
Q. They were the words of Mr. Israel— A. That's ght.
Q. According to Mr. Roff? A. Right.
Q. That you were through for good? A. Right.
Mr. O'Gorman: That is all.

CROSS EXAMINATION:
Q. (By Mr. Conrad) What was the first date you arted to work for the Regal? A. Around the first week February. 194
Q. Of what year? A. 1942.
Q. And at the time you had the first interview with r. Israel he said that he would see you'd only be an order cker? A. He didn't state that I'd only be an order pick-

Q. Had you been working at the time just previous coming to work for Regal? A. No, I had been unemoyed.

(85)

Q. For how long? A. About one month.
Q. And where had you been last employed prior to your 195
mmencement with Regal? A. For a yarn house, milnery supply house.
Q. And what did you do there? A. General work.
Q. Do any packing? A. No packing.
Q. Shipping? A. No shipping.
Q. Order picking? A. Picking, matching colors, and all deliveries to my particular customers that I had.
Q. In other words, you would deliver packages; is that ght? A. Small packages, yes.

196 Q. And how long had you been working for the yarn house? A. About six months.

Q. And where did you work before then? A. Before that I was working for an iron place in Bayonne, New Jersey. It was iron repair.

Q. What kind of place was that? A. A repair place, repairing violations on fire escapes and various type of general iron work.

Q. Did you repair furnaces? A. No, I didn't do the repairing.

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197 Q. What work did you do there? A. I was—I solicited and I gave estimates on jobs.

Q. And did you ever do any work in the premises? A. No.

Q. How long had you worked there? A. A matter of almost two years.

Q. Where did you work before that? A. Before that I was selling, on my own.

Q. In other words, outside of the yarn place and the Regal you had never done any work on the inside; is that right? A. That is right.

198 Q. And had you ever seen the Regal premises before the day you were interviewed by Mr. Israel? A. Yes.

Q. You had been there before? A. Yes.

Q. On what occasion? A. I had been up there the first time with a letter from a Miss Brown who was formerly employed in the firm.

Q. Yes? A. To give to Mr. Julius—to give to Mr. Roff.

Q. And you came into the office; is that right? A. I was outside, standing. I didn't come into the office.

Q. You mean out in the hall? A. Out in the hall by 199
the elevator.

(87)

Q. But you never went through the premises of Regal, did you? A. No.

Q. Neither on that occasion or on the occasion on which you were employed; is that right? A. That's right.

Q. Did you know the type of business that Regal do or did at that time? A. Well, I imagine it concerned itself with knit goods. I had no idea.

Q. You had no idea of how they operated their busi- 200
ness? A. No.

Q. Now, how long have you been a member of Local 155? A. Since March 1942.

Q. And how long was that after you started to work for Regal? A. A matter of three weeks.

Q. Have you a book with you? A. Yes.

Q. Let me see it.

(The witness handed a document to Mr. Conrad.)

Q. You are still a member of the union, aren't you? A. Yes.

Q. And you were quite active in the union; is that what 201
you state? A. Yes.

Q. And where were you when you told Mr. Israel that

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you would go to the National Labor Relations Board unless he changed your job? Is that what you said? A. Yes. In the show room.

Q. And what time of the day was that? A. About 9:30 to ten, when Mr. Julius Israel—it was his practice to come in around that time.

202 Q. And who else was in the show room at the time? A. Bob Goldberg.

Q. Who else? A. There may have been somebody. I don't recall. There was somebody else.

Q. And what day was that? A. That was Monday.

Q. What date? A. Towards the latter part of May.

Q. Would you say May 15th, 20th? A. Well, I would have to see a calendar.

Q. How long before you discontinued the employment? A. One week, around a week before.

Q. How did you know that you should go to the Na-
203 tional Labor Relations Board? Had you discussed it with some member of the union? A. I had—first of all, I had read of it myself on the clause in the National Labor Relations Board as to that no employer can do any unfair

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practice against those engaged in organizing a shop.

Q. Well, did you talk with someone at the union, whether the Regal was engaged in unfair practice? A. The very fact that discrimination was going on, I knew that unfair practice had been—and also I had discussed it with certain members of the union.

204 Q. That's right. Now, with whom did you discuss it? A. With Harold Brody.

Q. Anyone else? A. No. It had been my policy to discuss—I'd worked quite close, in close collaboration with Harold Brody, having been on the organizational committee.

Q. And you heard what he told others and yourself; is

(90)

that right? A. That's right.

Q. And you— A. I had also known that from my own knowledge, of reading about it. 205

Q. And you discussed this matter with other members of the union; isn't that right? A. That's right.

Q. That worked in the Regal? A. That's right.

Q. Only after hours or during lunch hours? A. I discussed at all times, up—

Q. During business hours? A. During business hours.

Q. You would go from one— A. While working, while working.

Q. In other words, you would go and talk to one and then the other at different times; is that right? A. No, 206 let's make it this way; If I was working along somebody, without pausing, continuing my work, and they were close enough near me, I would talk to them.

Q. In other words, you would not even look at the other person? A. I would look but continue working. In other words, not to halt the flow of business.

Q. You were very anxious about that, weren't you?

(91)

A. Yes, I felt it was my duty to continue doing the best possible job.

Q. Well, would that person be opposite you or alongside of you or back of you? A. They would be about a foot away from me. 207

Q. Alongside of you? A. Alongside of me.

Q. And you would turn to this person and talk with him; isn't that right? A. That's right.

Q. And at the same time you would be picking orders? A. That's right.

Q. And that did not affect your work at all? A. No, not at all.

208 Q. Or the quality of your work? A. No.

Q. Now, what other work did you do for Regal outside of picking orders? A. The stock clerk work.

Q. And what does that work consist of? A. The work consists of—after Ben Charney, who opened up the cases, would check the invoices, he would call one of the stock clerks. We'd pile on the truck and from the truck we'd go to the aisle taking as many boxes as we could carry off the truck, put them in the bins according to the various

(92)

styles and numbers.

209 Q. These cases that were put on the truck were quite heavy; is that right? A. They weren't heavy if you took two or three or five or six, depending on what you felt you could lift. Naturally I couldn't lift too many. I took as many as I could lift.

Q. But then you would pile them on this truck? A. On the truck, yes.

Q. And from the truck you would lift them into the bins or out of the bins; is that right? A. That's right. That's right.

Q. Who was this fellow Charney? A. Ben Charney
210 was in charge of the stock.

Q. Would he do lifting himself? A. Yes.

Q. Did you ever notice Mr. Israel or any of the Israels doing lifting? You have seen them work in the shipping department, haven't you? A. Yes.

Q. In other words, everybody does all types of work there; isn't that so? A. No, no, I wouldn't say that.

Q. Well, would you say just the Israels and the shipping boys do shipping? A. I mean it was my—I became quite

(93)

friendly with most everybody there and I—I also found out that those who had been order clerks remained order clerks for quite—once they had been made an order clerk, the only thing that they may have been transferred to the third floor, picking orders, or remained in the fifth floor, but they remained as order clerks. 211

Q. In other words, when Miss Strackman said that they changed the help around, all the help would do different types of work, she was not correct; isn't that right? A. She was correct in that she applied it to herself and certain types of girls who were quite experienced enough to do other type work. 212

Q. Isn't it a fact that men do all types of work and they eventually even become salesmen, graduated? A. Some men have become salesmen without going through the formality of doing stock or order—

Q. Yes? A. Because they have been highly recommended to Mr. Israel and they—I have known one or two occasions.

Q. But some of the salesmen there had originally started as order and stock clerks; isn't that right? A. That's right. 213

Q. So that when you stated that once an order clerk always an order clerk, you were not correct? A. I was cor-

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rect in that insofar as changing work was concerned, up until the time they received the promotion they remained as order clerk.

Q. Well, you— A. Naturally if they received a promotion to a higher job, paying more money, they were no longer an order clerk.

214 Q. But you were only working there three months, weren't you? A. I was working more than three months.

Q. How much more? A. From February to the end of May.

Q. From the beginning of February to the end of May. Well, say four months? A. Yes.

Q. And during those four months you knew of this and you knew the manner in which they conducted their business? A. That's right.

Q. And you knew everybody's business in the place; isn't that right? A. That's right. Not everybody's.

215 Q. Practically everything? A. It was my—I made it my concern to know everything pertaining to the business.

Q. For the union? A. For the union.

Q. In other words, you were really the agent of the

union in the place? A. No agent. No agent for the union.

Q. Well, supposing a question would come up where it was for the union and against the place, what would you do? Would you commit an act like that? A. What do you mean? Be specific. I mean that's a general—

Q. Well, you say you were for the union all the time?

216 A. Yes.

Q. In preference to Regal and everybody else; isn't that right? A. In preference to Regal on what matter?

Q. In any matter? A. In any matter? I can't answer a statement like that.

Q. Well, in preference to your own health? A. In preference to my own health, in regard to what?

Q. Well, you got a letter from a doctor; isn't that right? A. Yes.

Q. And that doctor said you can't do heavy work? A. That's right.

Q. Did you believe the doctor? A. I did. 217

Q. And a week later you say the doctor telephoned or wrote another letter to— A. No, not telephoned. Gave me a certificate.

(96)

Q. That you could do heavy work? A. That's right.

Q. Now, was the doctor wrong the first time or the second time? A. Doctors often make—not a mistake in the diagnosis but at the time it looks that it might be serious. Not being a medical man I don't think either you or I can judge whether he was that wrong or not.

Q. Did you think he was wrong, as a layman? A. As a 218
layman?

Q. That you could lift heavy packages? A. First of all, it had been my practice to avoid lifting weights since I had that serious hernia operation.

Q. But you just testified on direct examination— A. Yes.

Q. —that a week after that letter, the first letter, you could lift heavy packages? A. Due to the fact that I was an expectant father, I was desperate and I was willing to take the chance.

Q. But you were not willing to take the chance the week 219
before? A. The week before I had the strain and naturally it scared me and I didn't want to go through another hernia operation.

Q. Well, did the union tell you to go to the doctor the first time? A. That was done on my own.

(97)

Q. Did the union tell you to go to the doctor the second time? A. That was done on my own.

Q. You did not believe the doctor? A. It wasn't a

220 question of not believing. I had complete confidence in the doctor.

Q. And what did you go to the doctor for the second time? A. Because I wanted to continue working and it seemed that I had to produce a certificate to enable me to come back into the firm, to continue my employment.

Q. Well, the first time you did not question the doctor, did you? A. The first time—

Q. The first certificate that the doctor gave you? A. Which was presented and I figured that would be enough to change Mr. Israel's mind and make him continue me on
221 order picking.

Q. In other words, you did not want to do shipping? A. It isn't a question of whether I wanted to. I was unable to do shipping.

Q. Well, you mentioned before that two strapping colored fellows were working in the shipping department. A. That's right.

Q. When you came to work in the shipping department

(98)

where were they moved to? A. They were in the shipping department.

222 Q. Oh, they were not moved? A. They weren't moved.

Q. Oh, you were just helping them; is that right? A. Yes.

Q. What were you doing? A. I was doing the—I was told to do the same type of work as they were doing.

Q. Did you see Mr. Israel do that type of work too? A. Not that type of work.

Q. But Israel did work in the shipping department? A. By work I—he may have checked the orders, but to my knowledge he didn't do heavy work in the shipping.

Q. Did you check orders in the shipping department? 223
A. I checked orders, and—and was told to pack the same as the two negroes.

Q. Told by whom? A. Told by Moe Lawsky.

Q. Who is Moe Lawsky? A. He is in charge of shipping.

Q. Is he one of the colored fellows? A. No.

Q. You said your weight was 140 pounds? A. Yes.

Q. What is the weight of Moe Lawsky, approximately?

(99)

A. I don't know.

Q. Isn't he about your weight? A. No, a little more. 224
He's a little more.

Q. Five pounds more? A. No, I think much more than that.

Q. Well, would he be 180 pounds? A. No, I would say about 165.

Q. You would say he is that weight? A. Yes.

Q. Did he lift packages? A. I didn't see Moe Lawsky lift packages.

Q. Who lifted the packages before you came to work in the shipping department? A. Just two negro boys would do the heavy duty work. Moe Lawsky would pack 225
the smaller—there were certain type orders that they require packing in heavy cartons.

Q. That's right. Now, who did the heavy work after you came to work in the shipping department? A. The two negro boys and myself.

Q. In other words, they did not take the two negro boys off the heavy work and put you on, did they? A. One, one of them began to do more of the checking, and left the other one, one of them also did porter work.

226 Q. And you did checking too, didn't you? A. Very little. Mostly the heavy duty work.

(100)

Q. Did you do the calling off of the orders too in the shipping department? A. Yes.

Q. In other words, you were not discriminated against with these two colored fellows, were you? A. When I was put in I did checking just for a little while. Then I was put on sealing and packing.

Q. On sealing and packing? A. And packing.

Q. How many days did you work in the shipping de-
227 partment? A. Altogether, two days.

Q. And then what happened? A. Then I got this strain.

Q. I see. Now, would you say you did harder work than the two negro boys or would you say you shared the work with them? A. On this particular day it seemed I did the hardest.

Q. Who told you to do it? A. I was told to do it.

Q. You mean by Moe Lawsky? A. I was told by Moe Lawsky this was my job and I had to pack it.

Q. Now, isn't it a fact that the cartons never exceed
228 80 pounds weight? A. I wouldn't say. I'm not a good judge, but it was awfully heavy, much more than 80 pounds.

(101)

Q. But don't you know that legally they can't ship a carton weighing more than 80 pounds?

Mr. O'Gorman: I object, calling for a conclusion.

The Witness: I have no knowledge of that.

Q. (By Mr. Conrad) You don't know— A. Not being a shipping clerk I don't know the rates or pounds which one can ship.

Q. All right. So that when you testified on direct examination that these cartons weighed hundreds of pounds, you don't know what they weighed; isn't that right? A. That's true. 229

Q. I mean they may have weighed only 80 pounds? A. I don't think—it seemed much more than 80, much more than 100.

Q. When you said hundreds you did not mean that; is that right? A. Well, that's a figure of speech.

Q. A lot of your conversation is a figure of speech; I know it; a lot of your testimony is. Did the union tell you to say that? A. The union, no. 230

Q. No one at the union told you to say that? A. No, no.

Q. Did you discuss this case with Mr. O'Gorman? A. Yes.

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Q. How many times? A. Oh—once.

Q. Never before? A. No.

Q. Did you discuss it with Mr. Miller? A. Yes.

Q. How many times? A. Twice, I think.

Q. And did you discuss it at the union headquarters with Mr. Brody or any of the other representatives? A. Yes. 231

Q. How many times? A. Oh, quite a number of times.

Q. And did you go over the testimony how you were going to testify? A. No, not as to how—

Q. What did you do? A. I mean the case was there. There was nothing to prepare. I just stated the facts as they actually occurred.

Q. You mean that's all the union told you? A. That's right.

Q. And many times you had to go over that same thing;

232 is that right? A. No, there was no need to. I mean it was established facts. There was no need to rehearse like a play.

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Q. But did you? A. I didn't.

Q. In other words, you told them what you were going to say, and then they said O. K.; is that right? A. That's it. That's all.

Q. Why did you have to repeat that many times?

Mr. O'Gorman: I object—

The Witness: What do you mean by—

233 Mr. O'Gorman: The witness has not stated that he has repeated many times.

Mr. Conrad: Yes, he did.

The Witness: No.

Q. (By Mr. Conrad) Well, you said you discussed this matter at the union headquarters? A. Not the testimony. In regard to the Regal Knitting organization drive.

Q. I mean not so far as the facts are concerned? A. No.

Q. Didn't you have meetings with the union during the week? A. Yes, I—there was a committee formed, an or-

234 ganizational committee, and I was on that and I had meetings during the week.

Q. You mean the general meetings only took place on Saturday afternoon? A. That's right.

(104)

Q. And these tickets, theater tickets, they were offered to you just the same as other employees; is that right? A. Well, I refused, and they weren't offered to me.

Q. Were they always for Saturday afternoon or were they for other nights also? A. Well, to my knowledge on Saturdays.

Q. You mean only for Saturday matinee? A. That's right. 235

Q. Now, you testified that there was one meeting where many people said they would be there and did not appear at the meeting; is that right? A. That's right.

Q. Those people were not interested in the union as much as you were; is that right? A. Well, I wouldn't say.

Q. Well, they preferred—

Mr. O'Gorman: I object. This witness is not competent to tell the degree of interest that other people may have.

Mr. Conrad: I will withdraw it. 236

Q. (By Mr. Conrad) You talked with the people, didn't you? A. That's right.

Q. And what did they tell you? They preferred going to the theater to the union meeting? A. No, they—they were very much interested in going to the union meeting.

(105)

Q. But they went to the theater instead? A. Because they were told—naturally, seeing that the ticket is for that day, they felt they would go. Or I can't—I can't place myself and know how they reacted.

Q. But you talked with all of them, didn't you? A. Yes, I did. 237

Q. What did they say to you? A. I talked to a number of them and they said that they would attend the next meeting.

Q. Were you paid for the days that you were sick, those couple days? A. Yes.

Q. They paid you for them? A. That's right.

Q. And when you went back to the doctor on the second occasion— A. Yes.

238 Q. —did you tell him that you had to work and that's the reason you wanted another certificate? A. No, I—I went to the doctor to get an examination because I felt good and—and I wanted to be re-examined.

Q. Is that the same doctor that took care of the confinement? A. That's right.

Q. And he said there would be no danger if you went

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back to the shipping department? A. That's right.

Q. You got a raise of $2.00 in April? A. That's right.

Q. How long had you been working there then? A.

239 Since February, the early part of February.

Q. And nothing was said to you before you got that raise, was there? A. In regard to what?

Q. You had no conversation with anybody, did you, before you got the raise? A. No.

Q. I mean they just gave it to you without any previous conversation or preliminary conversation? A. The raise I took it was for my good work.

Mr. Conrad: I see. All right.

Trial Examiner Ward: Re-direct?

Mr. O'Gorman: No, I think that is all. That is

240 all I have with this witness.

Trial Examiner Ward: You are excused.

(Witness excused.)

Mr. O'Gorman: Could we go off the record, Mr. Examiner?

Trial Examiner Ward: Off the record.

(There was a discussion off the record.)

Trial Examiner Ward: On the record.

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PETER STEIN was thereupon called as a witness by and on behalf of the National Labor Relations Board and, having been first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. O'Gorman) Will you give us your full name and address, Mr. Stein? A. Peter Stein, 1146 Ogden Avenue, Bronx, New York.

Q. Are you connected with Local 65, C. I. O., the charging union in this matter? A. I am one of the officials of 242
the union.

Q. What is your position? A. I am the division secretary for the uptown division.

Q. Did you ever meet Mr. Julius Israel? A. I did.

Q. When and where? A. I met Mr. Israel sometime either in June or July at a luncheon.

Q. What year? A. Of 1942.

Q. Who was present at that luncheon? A. Mr. Conrad, the attorney.

Q. Anybody else? A. Nobody else.

Q. Will you tell us what was said by Mr. Israel at that 243

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conference, or luncheon, rather? A. I had asked Mr. Conrad to arrange this luncheon with Mr. Israel and myself in an effort to open negotiations for a contract. After a number of delays we finally got together at this luncheon, and I presented the viewpoint of the union. I stated at that time that there's been a long history of a struggle between the union and the employer in an effort to organize the employees and conclude an agreement, and that it was about

244 time it ceased. I further pointed out that we were in a war period and that the union, as part of the C. I. O., had pledged a no-strike policy, and that there was no reason why an employer and employees today couldn't get together. I went into a lengthy discussion as to what I thought were the benefits of a union and why a peaceful settlement of this strife would be favorable to both sides. I tried to point out to Mr. Israel that I thought he had some bugaboos about a union that should be eliminated. He told me he was very concerned about the fact that the union might run his business. I pointed out to him that the union had no such in-
245 tention. I finally asked Mr. Israel whether he would be ready to negotiate and conclude a contract with the union. He then advised me that he believed that since there was

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a war on, that unions shouldn't organize in war times, that there was enough trouble without unions organizing, and that perhaps we ought to wait until after the war and then after the war he would get together with us and see if he might not be able to get together on the union question with us. I said that that was impossible, I'm sorry that I couldn't convince him that he had taken the wrong atti-
246 tude, and that the union would not cease its efforts to obtain a contract or wait until after the war was over.

Q. Was anything else said at that luncheon? A. I don't recollect.

Mr. O'Gorman: Your witness, Mr. Conrad.

Mr. Conrad: No cross.

Trial Examiner Ward: You are excused.

(Witness excused.)

Mr O'Gorman: May we go off the record, Mr. Examiner?

Trial Examiner Ward: Off the record. 247

(There was a discussion off the record.)

Trial Examiner Ward: On the record.

What is your further pleasure, gentlemen?

Mr. Conrad: As I stated before the hearing started, I telephoned the National Labor Relations Board and told them that I had an important hearing on this afternoon at 2:00 o'clock and it is absolutely

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necessary that I personally appear therefor. And I informed the Examiner before this hearing that that would be necessary. 248

I request now that this matter be adjourned until sometime tomorrow morning suitable to the Examiner.

Trial Examiner Ward: The consel for the respondent did advise the Examiner at the start of the situation. The Examiner has the impression that he will be able to conclude tomorrow in any event, and it is also his practice to accommodate practicing attorneys.

We will take an adjournment at this time until 9:30 in the morning. 249

Mr. O'Gorman: Before you recess, Mr. Examiner, I have requested Mr. Conrad to admit that the dates alleged by the Board in its complaint with respect to the termination of the employment of both Jean Strackman and Arthur Klein be conceded as being correct dates.

The attorney for the respondent at this time is not willing to make that concession.

It therefore becomes incumbent upon me to prove

250 the dates as part of the Board's case. In order to do so, it is necessary that I subpoena all the records of the company, showing the payrolls for the periods involved, and also require the presence of Mr. Julius Israel and any other official of the company who is a proper party to qualify, in order to explain the records and have them introduced in evidence for

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that purpose.

Now, if Mr. Conrad is willing to do either one of two things tomorrow morning when we reconvene,
251 and they are, first that he will admit the dates to be true dates, or in the absence of that that he will bring in the necessary records and have the necessary company officials here so that the proper dates might be established, I will not request that you issue a subpoena *duces tecum* as well as a subpoena *ad testificandum* at this time.

Mr. Conrad, will you—

Mr. Conrad: That is agreeable to me, yes.

Mr. O'Gorman: —agree to that?

Mr. Conrad: Yes.

252 Mr. O'Gorman: In view of that, then I will not press my request for a subpoena.

Trial Examiner Ward: The Examiner understands that the respondent will either concede the dates or bring the necessary documents to show what the facts are.

Mr. Conrad: Yes.

Trial Examiner Ward: We will stand adjourned until 9:30 tomorrow morning.

(Whereupon, at 1:15 p. m. an adjournment was taken to 9:30 a. m. Friday, February 5, 1943.)

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Stenographic Transcript of Testimony at Hearing of February 5, 1943.

253

(Same Title.)

United States Courthouse, Room 1801,
Foley Square, New York, New York,
Friday, February 5, 1943.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:30 o'clock a. m.

Before: Peter F. Ward, Trial Examiner.

Appearances: Same as at previous hearing. 254

* * * * * *

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PROCEEDINGS

Trial Examiner Ward: The hearing will be in order.

Mr. O'Gorman: It is stipulated by and between Mr. Conrad as attorney for the respondent Regal Knitwear Co., Inc., and National Labor Relations Board by Cyril W. O'Gorman, attorney, that the dates alleged in paragraph 5 of the complaint which reads: "The respondent did on or about March 20, 1942, discharge Jean Strackman; and did 255 on or about May 22, 1942, assign Arthur Klein to more arduous or less agreeable work, and on or about June 3, 1942, did discharge the said Arthur Klein," the respondent stipulates that the allegations of the said paragraph are true with respect to the date of the transfer, the type of employment of Mr. Klein, as well as the termination of Mr. Klein's employment at the respondent's place of business, and also with respect to the date of the termination of the employment of Jean Strackman.

256 Mr. Conrad: All right, I will let it go at that.

Mr. O'Gorman: So stipulated?

Mr. Conrad: Yes. Are you ready?

Trial Examiner Ward: Proceed.

Mr. O'Gorman: The Board rests.

Trial Examiner Ward: The Board having rested, the respondent may proceed.

Mr. Conrad: All right. Moe Lawsky.

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257 MOE LAWSKY was thereupon called as a witness by and in behalf of the respondent and, having been first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Conrad) What is your name? A. Moe Lawsky.

Q. Where do you live, Mr. Lawsky? A. 1878 Harrison Avenue, Bronx.

Q. And where are you now employed? A. Regal Knit-
258 wear Company.

Q. The respondent in this case? A. Yes.

Q. How long have you been so employed there? A. For about 20 years.

Q. And what is your position there? A. I take charge of the shipping department.

Q. And how long have you taken charge of the shipping department? A. Oh, I would say for about 15.

Q. Do you know Arthur Klein? A. Yes, I do.

Q. One of the complainants in this case? A. Yes.

Q. Do you recall when he worked in the shipping de- 259
(116)
partment with you? A. Yes.

Q. How long a period did he work there? A. Just for a few days. I don't remember exactly.

Q. And what type of work did he do there? A. He was sealing boxes.

Q. Sealing boxes? A. Yes.

Q. Is it the custom in the shipping department to tie any boxes, tie with rope or any other twine? A. No, all our boxes are made to be sealed.

Q. In other words, they are cardboard cartons; is that 260
right? A. That's right.

Q. Now, Mr. Klein testified yesterday that these boxes weigh upwards of hundreds of pounds? Is that correct? A. No, that isn't.

Q. What is the weight of these boxes, these cartons? A. Well, the box don't weigh more than 65 pounds gross weight after it is packed. There is a stamp on the outside that says that the box should not weigh more than 65 pounds when packed.

Q. Mr. Klein also testified that you weighed 165 or 170 pounds. Is that correct? A. No, that's not correct. 261
(117)

Q. What do you weigh? A. About 147.

Q. And is that the heaviest you have been since you have worked there? A. Well, when I came there I weighed less.

Q. How much did you weigh? A. I weighed about 120.

Q. About 147 pounds is the most you have ever weighed since you have— A. That's right.

Q. —been employed by Regal Knitwear Company? Is that right? A. That's right.

262 Q. Now, Mr. Klein testified that when he worked in your department you transferred him to lifting the terrifically heavy boxes and you assigned easy work to some colored men working in your place. Is that correct? A. That's not true.

Q. Did you see Mr. Klein lift any heavy boxes? A. Not that I know of.

Q. What is the custom in the shipping department when you do have to lift a box of 65 pounds or so? A. There are other boys there nearby, you just call one over and the two of you lift them.

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Q. In other words, are those your instructions? A. Absolutely. Those are the instructions that I gave the boys.

Q. Now, how many men are usually employed in the shipping department under you? A. Five or six. Well, it depends. If we are busy we have more.

Q. Now, when you are busy do you get men from other departments to help you? A. I pull them out from all over. I take boys from the stock department if I need them.

Q. Or any other department where you— A. That's right.

264 Q. —need them from. Do you know a fellow by the name of Al Meyers? A. Yes.

Q. What work was he doing at the Regal? A. Well, he took care of parcel post.

Q. And how long did he work in the shipping department? A. For about eight years.

Q. And how much did he weigh? A. About 115.

Mr. Conrad: All right, that is all. Just one more question, Mr. Lawsky.

Q. (By Mr. Conrad) You know Julius Israel, don't you? A. Yes, I do. 265

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Q. And he has been connected with the Regal ever since you have been there? A. That's right.

Q. Did you ever see him go around striking any employees? A. Not that I know of.

Mr. Conrad: All right, that is all.

CROSS EXAMINATION:

Q. (By Mr. O'Gorman) When you say not that you know of, do you mean that you have trouble with your eyes? A. No, no trouble with my eyes. 266

Q. Well, did you or did you not see him strike— A. I never saw him strike anybody.

Q. When you say not that you know about, did somebody else tell you about it? A. Nobody told me anything about it.

Q. Do you mind holding up your hands for us, Mr. Lawsky? (The witness did so.)

Q. You don't toss any boxes around, do you? A. I certainly do.

Q. You do? A. Absolutely.

Q. Can you show me any calluses on your hands? (The witness held up his hands.) 267

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Q. Isn't it true that you, being in charge of the shipping department, do not handle any of the—do not carry or lift any of the boxes? A. Well, there are times that you have to. You get busy, you know, you lift up—

Q. Now, how often do you lift a box? A. How often?

Q. In the last 15 years? A. Well, I lift boxes every day.

268 Q. What size boxes? A. What did you say?

Q. What size boxes? A. What size? Well, the large boxes.

Q. And what are the large boxes? A. Well, I would say the cartons weigh about 50 or 65 pounds.

Q. 50 to 65? A. That's right.

Q. Now, you told us that there was a stamp on the carton? A. That's right.

Q. Which tells you that the weight to be carried in that carton should be limited to an amount— A. Yes, sir.

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269 Q. —not to exceed 65 pounds? A. That is correct.

Q. Don't you know as a matter of fact that a great number of plants exceed that weight limitation in making shipments? A. Well, when I see a shipment is heavy I tell them to make two out of it.

Q. Do you inspect every— A. Of course—

Q. —shipment? A. —those are the instructions that I give.

Q. To whom did you give these instructions? A. To the boys, to packers.

Q. And how often did you give those instructions out?

270 A. Well, every time we get an order like that.

Q. Every time you get an order? A. Absolutely.

Q. And how often do you get that type of order? A. Well, we ship some cotton goods and that's heavy, see.

Q. How often do you get that type of goods that's heavy? A. Well, I can't tell you offhand how often we get them. Whenever we get them—

Q. Does it arise two or three times a day? A. Yes, about that much.

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271

Q. And would you say at least that? A. That's right.

Q. At least two or three times a day? A. That's right.

Q. And whenever that occasion arose you notified the employees in the shipping department to make several cartons out of that order? A. That's right. So they shouldn't be so heavy.

Q. And you personally give those instructions to the people employed in the shipping department? A. That's right.

Q. Two or three times a day at least? A. That's right.

272

Q. Every day? A. That's right.

Q. Now, you mentioned the name of Al Meyers? A. That's right.

Q. Al Meyers handles parcel post, doesn't he? A. That is correct.

Q. Parcel post does not weigh any 65 pounds, does it? A. No, those are small packages.

Q. Sure. A boy of eight years of age could lift any parcel post package, couldn't he? A. That's right.

Q. So when your attorney asked you his weight and be-

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273

ing only 115 pounds, you did not mean to lead us to believe — A. Well,—

Q. —that he was handling hundred-pound cases, did you? A. Well, at certain times of the day—

Q. Just answer my question. A. Yes.

Q. You did wish to lead us to believe that? A. I didn't understand you. Will you repeat that?

Q. If you do not understand just ask and we will try to clarify it. In response to Mr. Conrad's question when

274 you replied that Mr. Al Meyers weighed only about 115 pounds, you did not wish to leave the Trial Examiner here under the impression that he was doing the heavy work in the shipping department, did you? A. Well, he also did—after all, a man don't stand there all day long and just with parcel post.

Q. Now answer the question.

Mr. Conrad: He is answering.

Trial Examiner Ward: Let him finish.

Mr. Conrad: Let him finish the answer.

The Witness: He did all the shipment, he en-

275 tered all the shipments and at times if there were cartons there to be piled up he helped the men pile

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them up and if he wasn't busy on parcel post he would come over to seal cartons also.

Q. Now, I believe you informed us that the cartons that you used at the plant were intended to be sealed, you used the type with the mucilage or glue affixed to one side of it? A. That's right.

Q. Isn't it also a fact that you also put rope around it and that express companies and freight companies re-

276 quire the addition of the rope in a great number of packages before they will accept them for shipment? A. We don't use any rope.

Q. You do not use any rope at all? A. Not on the cartons, not goods that are sealed.

Q. What do you use it on? A. For making packages.

Q. On what? A. For making packages, parcel post packages.

Q. Parcel post packages? A. Yes.

Q. Do you make any local shipments that do not re-

quire sealing? A. Yes, maybe three or four a day, very seldom. 277

Q. Now let us find out how seldom they were. What was the size of those packages that were made up for local

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delivery that you tied? A. Size of the packages, not very large. They would weigh about 50 or 60 pounds gross.

Q. 50 or 60 pounds? A. That's right.

Q. That is not very large? A. We also have smaller ones too.

Q. And you would use rope? A. Yes, on those city shipments. 278

Q. It was necessary to lift the carton in order to get the rope around? A. Well, yes, that's right.

Q. So that you do use rope in your department? A. Very seldom.

Q. The question was whether or not you use it. I did not ask you how often. A. As I said before, we have a few cartons a day of these city shipments, just a few, two or three a day at the most, and those cartons we tie, that's all. All the others we seal.

Q. Now, how often did you inform the men in the shipping department to call upon the other men to aid them 279 in lifting cartons? A. Well, I tell them every day.

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Q. Every day? A. They know, themselves, if there's a heavy carton there they don't lift it. There are boys nearby and they get somebody to help them.

Q. Did they so inform you that they know? A. What did you say?

Q. Did they tell you that they know— A. They don't tell me the carton is laying there. They will not lift it.

280 Q. They will not lift it? A. They will not lift it themselves.

Q. How do you know that they know they should call somebody else? A. What did you say? I did not get that.

Q. How do you know that they know that they should call somebody else? A. Because those are the instructions that I gave them. They will not lift up a heavy carton themselves. If there is a heavy carton and I am supposed to lift it I won't pick it up myself.

Q. Now, at the time Arthur Klein was called into the
281 shipping department will you tell us who the other employees in that department were? A. Let me see. There was James there, James Ashley. There was a Mike Periano. There was Al Meyers. There may have been one or two more that I took from the stock department at that

time.

Q. And was that a busy season? A. What month was that?

Q. Was that a busy season when Mr. Klein— A. What month of the year was that?

282 Q. —was called in? A. I don't remember correctly when it was.

Q. You do not remember when he was called in? A. The exact. If you will tell me what month it was.

Q. But you remember instructing him to call for assistance in lifting heavy cartons? A. That's right.

Q. And you remember instructing him to call upon others— A. Let me see. I believe it was the bathing suit season. It might have been around April or May or March.

Q. Your recollection as to when he was there covers a period of several days and it might have occurred in any one of three months? A. That's right. 283

Q. April, May or March, as you put it? A. That's right.

Q. That is your best recollection as to when he was there? A. My best recollection.

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Q. But you are certain that you instructed him as to what he should do if he had a heavy carton? A. That's correct.

Q. Now, is that your busy season, Mr. Lawsky? A. No, I wouldn't call that our busy season. We are much more busy in the fall. 284

Q. In the fall? A. That's right.

Q. Now, what is the usual number of employees employed in your shipping department? A. I told you that before, didn't I?

Q. You had the usual number when Mr. Klein came into the shipping department; is that true? A. Yes, we had about four or five at that time.

Q. Four or five? A. I don't remember—

Q. You had enough men to handle the usual quantity of work and you say that was not the busy season? A. Well, certain days we get busy and I call extra help in. 285

Q. But at the time Mr. Klein was assigned to your department you had your normal working force? A. Well, at that time—

Q. Consisting of Ashley, Periano, Meyers and one or

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two others, as well as yourself? A. That's right.

Q. And that was sufficient to handle the ordinary

286 amount of business that was being handled at that ti
A. Well, if I called him for that day we must have
more work to do, otherwise I wouldn't have called hi

Q. Now let's find out about that. Do you recall
Julius Israel being present in your shipping departm
the day Mr. Klein was instructed to remain in the s
ping department? A. I don't remember.

Q. You don't remember? A. No.

Q. Do you remember telling Mr. Klein that you
received instructions from Mr. Israel to have Mr. K
remain in the shipping department? A. No, he did

287 tell me that.

Q. Now, in the past—you have been in charge of
shipping department for 15 years; is that true? A.
that's correct.

Q. And whenever you found need for additional
ployees did you go to the office and explain your dilem
or would you go to another department? A. I don't
plain. Whoever I can get, whoever is not so busy I t
And Mr. Israel would come out at certain times and h
out too if he had to.

(130)

288 Q. You would just go wherever you want to and w
ever department you saw somebody who appeared no
be busy? A. That's right. Wherever I can grab, in o
words.

Q. Now then, the ordinary situation you were
one that went around and instructed the employees to
out in the shipping department; is that true? A. Th
correct.

Q. Did you go to Mr. Klein on this occasion and
him that you wanted him to work in the shipping dep
ment? A. I believe I remember telling Tom.

M. Lawsky, for Respondent, Redirect.

Q. Who is Tom? A. Tom is the head of the stock department. 289

Q. Do you know his last name? A. McCusker.

Q. Is he still employed at Regal Knitwear? A. Yes.

Q. Do you know his home address? A. No. Out on Long Island somewheres.

Q. And did Mr. McCusker go and tell Mr. Klein? A. I told him that I need somebody, and he sent him up.

Q. Now, was Mr. McCusker in charge of the order pickers? A. That's correct.

Q. As well as the stock clerks? A. That's right.

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Q. And it is your contention that Mr. McCusker when informed by you went to Mr. Klein and told Mr. Klein to report to the shipping department? A. That's correct.

Q. Right. You were not here yesterday, were you? A. No.

Q. You are sure of that? A. That's right.

Trial Examiner Ward: Sure of what?

Mr. O'Gorman: That he instructed Mr. McCusker to have Mr. Klein report to the shipping department.

Trial Examiner Ward: The last question was you were not here yesterday, and then your next question was you are sure of that. I just wanted to get it correct. 291

Mr. O'Gorman: I think that is all, Mr. Lawsky.

Mr. Conrad: Just one question.

RE-DIRECT EXAMINATION:

Q. (By Mr. Conrad) In the order pickers, are only men employed there or men and girls? A. Men and girls.

292 Mr. Conrad: I see. That is all.
Trial Examiner Ward: You are excused.
(Witness excused.)
Trial Examiner Ward: Call the next.

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LOUIS GREENBERG was thereupon called as a witness by and in behalf of the respondent and, having been first duly sworn, was examined and testified as follows:

Direct Examination.

293 Q. (By Mr. Conrad) What is your full name? A. Louis Greenberg.

Q. And where do you reside? A. 2066 82nd Street, Brooklyn.

Q. You are also known by the name of Louis Green? A. Right.

Q. And what is the name as used in your employment with the Regal Knitwear? A. In the nickname they call me Louie Green.

Q. Louie Green. That is, everybody knows you as Louie Green or Mr. Green? A. That's right.

294 Q. And you are now employed by the Regal Knitwear Co., Inc.? A. That's right.

Q. Now, how long have you been so employed? A. A little over 20 years.

Q. Do you know Jean Strackman? A. I do.

Q. Jean Strackman testified here yesterday that she saw Mr. Israel hit you on the head either with his hand

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or instrument or something, causing a mark on your head. Is that correct? A. No.

L. Greenberg, for Respondent, Cross.

Q. Did Mr. Israel ever hit you anywhere? A. No, sir. 295
Q. In the time that you were employed did you ever see Mr. Israel strike any employee working there? A. No, sir.

Q. Did you during your employment come in contact with Jean Strackman? Did you see her there? A. Yes, sort of.

Q. I mean she never worked in your department. A. No, sir.

Mr. Conrad: That is all.

CROSS EXAMINATION.

Q. (By Mr. O'Gorman) Are you uncomfortable in 296
that chair, Mr. Green? A. I'm all right, fine.

Q. You seem to be a little uneasy. A. Just facing the counsel.

Mr. Conrad: I move to strike out the remarks. I think you seem to be uneasy too, Mr. O'Gorman.

Trial Examiner Ward: The motion is granted.

Q. (By Mr. O'Gorman) You worked for Mr. Israel 20

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years, Mr. Green? A. Yes, sir.

Q. You would not think an ordinary little push would be striking, would you? A. I don't know any such things 297
as push. What is this, baby talk?

Q. Well, I don't know what he did there; I am trying to find out from you. A. There was no pushing, that's all. I never had the occasion of being pushed from anybody. I don't look a weakling to allow anybody to push me around.

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Q. You would not allow Mr. Israel to push you around? A. No, sir.

298 Q. And in twenty years he has never raised his voice to you? A. Oh, on occasion, we have occasion—listen, a husband and wife have occasion to raise each other's voice.

Q. Well, that comes under the heading of indoor sports. A. All right—

Q. But let's get back here. What is the nature of your work at the Regal Knitwear? A. I have been buying wool for Regal. I am the wool buyer for Regal Knitting Company.

Q. You are the buyer? A. Yes, sir.

Q. And do your duties require you to go through the 299 plant? A. No. I occasionally go through.

Q. What do you do when you go through occasionally? A. Just go through and see what the stock was. At one time I used to take charge of a certain department. That is, we used to manufacture merchandise and I used to go through stock and see whether the merchandise was in order and what merchandise is needed to order.

Q. I see. Well, what is the necessity for you to be in the plant, that is, outside the office section? A. The necessity is that I buy materials, like wools and silks and so forth, and I redistribute those to varions factories. When

300 those factories get those various—factories, so-called, get orders, they call me or they write me letters that this is the amount of material they need for certain orders; and I purchase the materials to conform with those orders.

Q. They also send you telegrams too, don't they? A. No, they don't send telegrams.

Q. No? A. They call me on the phone or they send me letters, that is requisitions, for various materials.

Q. Have you been in a hospital lately, Mr. Greene? A. No, sir.

Q. A rest home? A. Do I rest home? 301

Q. I said were you in a rest home? A. No, not me.

Mr. Conrad: Mixed up, O'Gorman.

Q. (By Mr. O'Gorman) Can you tell us where the trimming department is located at the— A. It was not far away from my department.

Q. It was near the office, wasn't it? A. Yes.

Q. And someone in the trimming department could see what was going on in your office? A. Oh, yes, sir.

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Q. And a person in the trimming department if he had been acquainted with the people who had been in the office 302
for a number of years would not have any difficulty recognizing the people— A. That's right.

Q. —inside the office? So that if a person saw one man strike another inside that office and the one observing all this was in the trimming department— A. Would see it.

Q. —there would be very little chance of any mistake in identity? A. No, sir.

Q. I see. Now, Mr. Greenberg, you know that you are under oath, don't you? A. I am, sir.

Q. And you know the importance and the possible penalties for perjury? A. I do, sir. 303

Q. And you also know that you have held a job with Mr. Israel for over twenty years? A. Right, sir.

Q. And do you now wish to tell us that at no time during that twenty years did Mr. Israel strike you or lay a hand on you? A. No, sir.

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Q. Is all this hitching of pants and shifting necessary to say no, sir?

Mr. Conrad: I object to the remarks of Mr. O'Gorman.

304 The Witness: No, listen—

Trial Examiner Ward: Just a minute.

Mr. Conrad: I think he has done a lot of shifting himself.

The Witness: Nobody can push me around.

Trial Examiner Ward: Just a minute.

What is your—

Mr. Conrad: I object to the remarks of Mr. O'Gorman, unless he makes a remark that he is doing a lot of shifting too. Put that in there too.

Mr. O'Gorman: I think the demeanor of this wit-

305 ness should be observed by you. I—

Mr. Conrad: I think—

Trial Examiner Ward: Just one at a time.

Mr. O'Gorman: I think the demeanor of this witness is highly important and I think not alone for your observation but for anybody else that might have occasion to review this record, that his demeanor on this stand should be recorded.

Trial Examiner Ward: The Examiner observes the demeanor of all witnesses. And the objection is sustained.

306 Mr. Conrad: I move to strike it out.

Q. (By Mr. O'Gorman) Did you ever have a nervous

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breakdown, Mr. Greene? A. Never, sir.

Q. Were you ever away from your usual employment for any long period of time because of illness? A. Not that—oh, I once had trouble with my tonsils, stood away for about four to five days. After I had them removed I haven't been absent since then.

Q. And you now tell us that the longest period of time

you were away from Regal Knitwear over a period of twenty years was no greater than five days? A. Illness only, with the exception of vacation. I get my vacation every year. 307

Q. With the exception of your vacation period every year? A. That's right.

Q. Do you carry any accident-health policies, Mr. Greene? A. Any accident-health?

Q. Yes. A. I carry an accident insurance with the Commercial Travelers.

Q. Do you carry a health policy? A. No, sir.

Q. You carry that with the Commercial Travelers? A. Righto. I can give you the number if you want it. 308

Q. That would be helpful. A. Yes, sir.

Q. How many years have you carried that policy?

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A. Oh, I should judge about fifteen years.

Q. Fifteen years? A. Do you want to see it?

Q. Yes, I shall be glad to see it. (The witness showed a document to Mr. O'Gorman.)

Q. Do you carry any other policies? A. Life insurance policies.

Q. Life insurance? A. Right. 309

Q. Does that carry any sick benefits? A. No, sir.

Q. Does it carry a clause—do your life policies permit you to avoid the payment of your premiums if you are disabled? A. I really don't know. To be honest with you I don't know. In fact my policy is paid up. I have a policy that's all paid up.

Q. Fully paid life policy? A. That is it's passed twenty years.

Q. Twenty-year fully paid? A. Yes.

310 Q. Now tell us, did you make any claim against the Commercial Travelers Insurance Company under that policy? A. Oh, at various times I had accidents in the place, quite a few, or some splinters in my hand.

Q. Now let us go back and we will take individually the

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number of claims that you made. A. Oh, I don't remember. I believe about three or four times.

Q. When? A. Oh, one—I can't, I can't recollect the days. It's impossible. I had one time that I fell in the street, I ripped a little shin bone here. I made a claim on that. I tore my suit.

311 Q. Ripped the shin bone? A. Yes.

Q. Was it fractured? A. No, just ripped and I had my trousers were torn, and I believe they paid me for it.

Q. What do you mean, ripping bone? You mean partial fracture? A. No, I just happened to slip on the ground and I scraped my shin bone.

Q. I see. And then another occasion you put in a claim for ripped trousers? A. No, that was at that time.

Q. At that time? A. That's right.

Q. Now, you say you had three or four claims? Now, that is one claim? A. All right.

312 Q. When did that take place, do you know? A. Oh,

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so many years ago I don't remember.

Q. Was it ten years ago? A. It may be ten, fifteen years ago. I don't remember those things.

Q. Fifteen years ago? A. Yes, sir, about that.

Q. And you were paid by the company at that time? A. Oh, yes.

Q. Do you recall how much you were paid? A. A small amount. Gave me partial because I wasn't sick home.

L. Greenbery, for Respondent, Cross.

Q. You just got partial disability? A. No, this requires—when you are sick home when you meet with an accident they pay a certain amount and if you are—if you can go to business, why, they give you partially. They make a sort— 313

Q. Partial disability? A. That's right.

Q. As differentiated from total disability? A. That's right.

Q. Now— A. Just a minute. Don't try to confuse me.

Trial Examiner Ward: One at a time.

The Witness: The insurance policy calls in case you are sick home you get so much but if you are not sick home, if you can go to business, they pay you a certain amount. 314

(143)

Q. (By Mr. O'Gorman) Now, how much did you receive at that time, do you know? A. I don't—small amount.

Q. $200, $300? A. No.

Q. What do you mean by a small amount? A. Oh, I believe one time it was something like 50, $60.

Q. $50, $60? A. Or maybe less. I just can't— 315

Q. And how much does your policy call for with respect to weekly payments in the event of a disability? Does it call for $25 a week? A. It calls for $25 a week if I am sick home.

Q. If you are home? A. That's right.

Q. But if you can go to work you get less than $25 a week? A. If I go to work I get a half of the amount.

Q. You get half? A. That's right.

Q. So if you go to work you get $12.50 a week? A. That's right. That's right.

316 Q. So that when you got $50 or $60 you were paid for — A. Well, I take—

Q. —four or five weeks? A. This happened to be while

(144)

I was on my vacation. My firm doesn't know about it. I did some diving and I sprained my ankle and my ankle was bad; therefore I made a claim with the insurance company and they paid me for it because I was—during my vacation time I wasn't able to use my ankle, my foot.

Q. Is this the time you reported to the insurance company that there was a ripped shin bone? A. No, that was
317. fifteen years ago and this is something that happened later on.

Q. This is another one? A. Yes.

Q. When you were diving on your vacation you— A. Well, I got—

Q. —sprained an ankle? A. I met with an accident—

Q. And how much were you paid for your sprained ankle? A. I don't remember.

Q. You don't remember. And can you tell us what year that occurred? A. I don't remember just certain years. I just can't carry it because—you can look up the
318 record yourself, because I can't remember the dates.

Q. Certain years are a blank in your mind, do you mean? A. I can't remember just what year it was, because I have not been sick a day in my life as far as I'm concerned, I told you, with the exception of my tonsils.

(145)

Outside of that there when I had those minor accidents, that's on my own part.

Q. Well, now, you have told us about two minor accidents. A. Well, that's my own business there, but I

Q. Well, now, you have given us two and you said you had four claims? A. Something like that. 319

Q. Now tell us about the other two occasions. A. I don't remember them. I told you I had—if you want the information you can get it from the Commercial Travelers.

Q. But you only can remember two out of the four claims you made— A. I—

Q. —under your policy? A. That's right. I had my insurance policy so many years and I just don't remember what it is. I don't remember just tell you days. I didn't keep a record of it.

Q. Things of that character you cannot remember? A. No. 320

Q. And you were injured in all those accidents when you made a claim, you sustained some injury? A. I had —I had an occasion where a splinter went into my hand. My hand was swollen. And they settled with me for a certain amount. I just can't remember the amount.

Q. And did you receive that splinter injury while you

(146)

were employed? A. Yes.

Q. And did you make a claim for workmen's insurance? A. No. 321

Q. You did not? A. No.

Q. Did you know that you were entitled to make a claim? A. I do but I never, I never claimed anything with the workmen's insurance because I didn't want it and need it. My firm paid me for the time, therefore I didn't think it was necessary for me to look for trouble, because it takes up time and so forth.

Q. Well, you know that your firm, employers pay for workmen's compensation insurance, don't you? A. Yes, I do sir.

322 Q. And you only saw fit to make a claim against your own insurance company? A. That's right. The reason—

Q. Not against the company that your employer was paying his premiums to? A. I wasn't interested in them because they paid me my weekly salary. I didn't think it was necessary for me to—for me to make any claims.

Q. Now tell us about the other occasion when you made

(147)

a claim. A. That's all there is. I don't remember. Such minor things there that I—it isn't even worthwhile to even talk about.

323 Q. Minor injuries you do not pay any attention to; is that it? A. I have no occasion to be injured.

Q. Well, you said minor things you don't pay any attention to? A. Well, if you cut your finger or something like that there, I have no occasion in my business, there's no such thing as—as accidents. All I do is push a pen around or a pencil and use a phone.

Q. I see. A. So what injury—if you walk around here you maybe can do the same thing.

Q. Well, you know that most people die in bed, don't you?

324 Mr. Conrad: I object to that question.

The Witness: I didn't die yet.

Mr. Conrad: Mr. O'Gorman may not.

Mr. O'Gorman: What?

Mr. Conrad: You may not.

Mr. O'Gorman: That's true.

Trial Examiner Ward: Proceed.

Q. (By Mr. O'Gorman) But these minor injuries, you say, things that happened you didn't pay any attention?

A. That's on my own time. I didn't bother anybody, I 325
(148)
didn't tell anybody about my business.

Mr. O'Gorman: That is all.

The Witness: Is that all?

Mr. Conrad: All right.

(Witness excused.)

Trial Examiner Ward: Off the record.

(There was a discussion off the record.)

Trial Examiner Ward: On the record.

The record may show that the witness' name is Greenberg, spelled G-r-e-e-n-b-e-r-g; he is sometimes 326
referred to merely as Green and sometimes an e is added to the Green; his correct name, however, being Greenberg.

Proceed. Call the next.

Mr. Conrad: Mr. Roff.

ALEX ROFF was thereupon called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

Direct Examination: 327

Q. (By Mr. Conrad) What is your full name, Mr. Roff? A. Alex Roff.

Q. And where do you reside? A. 2840 Ocean Avenue, Brooklyn.

Q. Are you employed by the Regal Knitwear Co., Inc.? A. I am.

(149)

Q. And how long have you been so employed? A. Fifteen years.

A. Roff, for Respondent, Direct.

328 Q. What is your position there for the last ten or fifteen years? A. Office manager and credit manager.

Q. Do you know Arthur Klein? A. I do.

Q. Do you recall a conversation you had with him in May 1942 or thereabout? A. I do.

Q. Will you tell us what that conversation was? A. About the latter part of May I was called by my telephone operator who informed me Mr. Klein was out to see me. I went out into the lobby and he says to me, "Mr. Roff, may I see you?" I said certainly, and I took him into an office there. Well, he sat down and I says, "What can I do for you?" He says: "Well, I don't like the job in the shipping department that they gave me." He says: "They took me from the order department; I like that kind of work; and they transferred me." I said: "Well, what do you want me to do about it?" I said: "I'm only the credit man here." So, well, with that we spoke about five minutes or so and he pulled out a letter that he showed me

329

(150)

from a doctor. I says: "I can't help you any." I says, "I'm only a credit man, I can't do anything."

Q. Was it through you that Mr. Klein was employed by the Regal? A. Yes. We used to have a stenographer there by the name of Miss Brown and after she left, well, Mr. Klein came in to me with a letter from Miss Brown, who asked me to do something for him. In fact she called me up too. She told me he was out of work a few weeks and he has a wife, his wife is in—going to become a mother. And I says: "Well, I can't do anything for you but I'll tell you what I'll do: I'll introduce you to the boss, Mr. Julius Israel." Which I did.

330

Q. And did he give you this letter or this paper? A. Yes, he gave me this paper when he came in to see me.

Mr. Conrad: Let me offer this in evidence. 331

Trial Examiner Ward: That paper being Respondent's Exhibit 1 for identification.

(The document referred to was marked Respondent's Exhibit No. 1 for identification.)

Mr. O'Gorman: No objection.

Trial Examiner Ward: It will be received.

(The document referred to, heretofore marked for identification Respondent's Exhibit 1, received in evidence.)

(151)

Q. (By Mr. Conrad) What is the setup of your office there, the physical setup? Do you have a large room where you have about—how many girls have you got working in your office? A. Well, about ten girls. 332

Q. And how large a room is that? A. Well, I would say it is about half, half the length of this room and about the same width I would say.

Trial Examiner Ward: This room is about—

Mr. Conrad: About fifty feet or so.

Trial Examiner Ward: About twenty—about thirty feet long.

Mr. Conrad: Easily that. 333

The Witness: Well, it is probably about—well, say two-thirds of this room, by about the same width.

Trial Examiner Ward: And this width of this room the Examiner would estimate as about 22 feet.

Q. (By Mr. Conrad) And where is the private office of Mr. Israel? A. Right next to mine.

Q. Now, is there a door leading from your office into Mr. Israel's office? A. That's right, there is.

334 Q. Is there any door leading from Mr. Israel's office out to any public or private hall? A. No.

(152)

Q. There are two doors in Mr. Israel's office; isn't that right? A. That's right, yes.

Q. One leads into your office? A. Yes.

Q. And the other door leads into where? A. Leads into—it's called like a contractors department. When the contractors come in and Mr. Israel wants to interview them, speak to them about business, he takes them into that little room like. Samples are usually kept there.

335 Q. Now, did you ever see Mr. Israel strike anyone in the place during the time you worked there? A. I did not.

Mr. Conrad: That is all.

Trial Examiner Ward: Off the record a moment.

(There was a discussion off the record.)

Trial Examiner Ward: On the record.

CROSS EXAMINATION:

Q. (By Mr. O'Gorman) How many times did you speak to Mr. Klein with respect to his employment in the shipping department? A. He came in to see me, it's either

336 two or three times.

Q. Well, now, you have only testified to one conversation in your direct examination. Now will you tell us when

(153)

these other occasions occurred? A. He came in again about—I think about six days later and spoke to me again, about not wanting to work in the shipping department. And I still told him that I couldn't do anything for him.

Q. Anything else? What did he say? A. Well, he—

Q. Did he ask you to see Mr. Israel? A. Well, he sort

of—he sort of wanted me, you know, being that we were very friendly, we were kind of friendly and he sort of wanted me— 337

Q. You mean you and Mr. Klein were friendly? A. Yes. He wanted me to sort of intercede with Mr. Israel.

Q. Tell us what he said to you when he made that request? A. Well, he says to me: "I'm working in the order department and I like that kind of work, you know, I can learn, learn various sweaters, you know, and I don't like that shipping job work." He says: "I can't learn anything there." In other words, he started to try to infer—

Q. Never mind what he inferred. Just tell us what he said. 338

Trial Examiner Ward: Let him finish.

The Witness: That he couldn't get anywheres in the shipping department, that's all.

Q. (By Mr. O'Gorman) Was that the only reason he gave for his desire to change? A. Well, practically, yes.

(154)

Q. Well, practically. Was it the only reason? A. It was the only reason.

Q. And at the same time he handed you this letter stating that he had a hernia repaired several years ago? A. Yes, after the conversation that I had with him about the other part he pulled out this letter and says: "You see, Mr. Roff, I can't do that type of work." I says: "I can't do anything." 339

Q. And he discussed his physical condition with you, didn't he? A. Well, just casually. I mean casual.

Q. Casually enough to leave a letter with you from the doctor? A. That's right.

Q. Telling you that he was unable to perform heavy work? A. That's right.

340 Q. And now you still wish to tell us that the only reason he had for wishing to be changed out of this shipping department was because he could not get anywhere in that department? A. I do. Towards the end of the conversation he pulled out this letter and in order—he thought, well, that would make the case stronger for him. I still told him, "Listen, I'll have to still see Mr. Israel about it."

Q. He thought that would make the case stronger?

(155)

How did you know he thought that? A. Well, I have an idea.

341 Q. You have an idea? A. Yes.

Q. Do you have an X-ray mind or eyes you could see ideas— A. No.

Q. —inside the brain? A. I can't see any ideas in anybody's brain.

Q. That was your opinion that he thought? A. Yes, my opinion.

Q. Well, why not tell us it was your opinion, instead of telling us that it was his idea? A. I didn't understand that last question.

Q. Why don't you tell us that it was your opinion in-
342 stead of his idea or purpose? A. That isn't so. That was the conversation I had with him. I could have judged by the conversation that he had with me, the things that he said to me, that he didn't want to work in the shipping department.

Q. Well, now, what was the next—did he ask you to talk to Mr. Israel for him? A. He did.

Q. Did you? A. I did.

Q. And what did you say to Mr. Israel and what did he

(156)

say to you, if anything? A. I told Mr. Israel that Klein was in and he doesn't want to work in the shipping department and he left me this letter. Now, Mr. Israel said, "Well, I'll see about it." He didn't—in other words, he didn't give me a direct answer. 343

Q. Now, did you take up the matter with the doctors for the insurance company? A. Not the doctors. I called up our insurance company.

Q. All right. Now, who was the person you called? A. M. M. Levy and Company. He's our insurance broker.

Q. And company? A. Yes. 344

Q. Where are they located? A. I think it's 90 John Street. I am not sure of the address.

Q. 90 John? A. I think so.

Q. They are the insurance brokers? A. They are the insurance brokers.

Q. And what is the name of the insurance company that carried workmen's compensation insurance at that time? A. The Butchers Mutual.

Q. The Butchers Mutual? A. That's right.

Q. And tell us what the conversation was that you had with Mr. Levy? A. Well, I— 345

(157)

Q. Was it Mr. Levy himself that you talked to? A. Mr. Levy himself. I told him that we had a man here who claims that he has a hernia. And he asked me did he get it while he was with us? I says I don't think so; from the conversation I think the man had it several years. And, well, he says to me right there, he says, Roff, you may have —you may have something on your hands, you know, because after all I don't want to get myself mixed into a hernia case. That's about all that was said to him.

346 Q. And then you conveyed that information to M
Klein to the effect that the insurance company did not wa
you to employ him in the shipping department? A. We
I told him that I got in touch with the insurance compar
yes.

Q. You told Klein that? A. That's right.

Q. Now, the next time that you saw Mr. Klein, wh
you gave him Mr. Israel's final decision, will you tell
how that came about? A. Well, he come in and he sa
to me, "Well, what's doing?" I says, "Well," I say
"are you willing to work in the shipping department
347 And he says no, he doesn't like it there. He said, "If y

send me back to the order department I'll work here."
says, "Well, that's all I can do for you."

Q. When was the last time you talked to Mr. Isra
about Mr. Klein being reinstated? A. When was th
last time?

Q. Yes, that's right? A. I spoke to Mr. Israel rig
after Mr. Klein was there the first time.

Q. You did? A. That's towards the end of May.

Q. And Mr. Klein made two more visits? A. No, o
348 more visit.

Q. One more visit? A. Just about five or six day
later.

Q. Well, did he bring back a second statement fro
his doctor? A. He did.

Q. And did he give you that? A. Yes.

Q. Where is that second statement? A. Well, we hav
that.

Mr. Conrad: Is that one of the papers you gav
me?

The Witness: That's that second letter, you know. 349

Q. (By Mr. O'Gorman) Let's go back to your telephone call to Mr. Levy, the insurance broker.

Mr. O'Gorman: Do you wish to offer that?

(159)

Mr. Conrad: No. Do you want to offer it?

Mr. O'Gorman: I will inspect it, if I may.

Mr. Conrad: No. Do you want to offer it?

(Mr. Conrad handed the document to Mr. O'Gorman.)

Mr. O'Gorman: I will offer it.

Mr. Conrad: All right, offer it in evidence. 350

Mr. O'Gorman: It is stipulated that this letter—

Mr. Conrad: Not stipulated at all, no stipulation at all. You said you wanted to offer it in evidence. Put it in evidence, by the National Labor Board.

Mr. O'Gorman: I offer it as Board's Exhibit 3, I believe.

Trial Examiner Ward: I believe that is right.

Mr. O'Gorman: Any objection, Mr. Conrad?

Mr. Conrad: No, not at all.

Mr. O'Gorman: Might save our breath if we stipulated the receipt of it. 351

Trial Examiner Ward: It will be received.

(Whereupon the document above referred to was marked as Board's Exhibit 3 and received in evidence.)

Mr. Conrad: Note the date on it.

Q. (By Mr. O'Gorman) Now, when do you recall the date when you called Mr. Levy? A. Well, it probably was about three days after Mr. Klein came to see me, about two or three days, I would say.

(160)

352 Q. On the first occasion he gave you the first letter, dated May 25? A. That's right.

Q. So that you telephoned Mr. Levy on the 28th or 29th? A. I would say about the 27th or 28th, around that, two or three days, as near as I can remember.

Q. Now, at that time I believe you testified to the effect that you told him you thought he got the—did not get the hernia at the plant; is that right? A. Yes, I did.

Q. You told him you thought that? A. Yes.

Q. At the time you were talking to Mr. Levy you had
353 received two or three days previous to that a letter which stated definitely, among other things: "He has had a hernia of the right side which was repaired several years ago." Now you had read that letter, hadn't you? A. Tell you the truth, I only—I just about glanced over the letter.

Q. You were not interested in the letter? A. Well, I wouldn't say I wasn't interested but I just about glanced over it. I—you see, I just took it as a matter of course. I was very busy there and—

Q. Your answer is you took it as a matter of course? A. Yes.

(161)

354 Q. You were very busy. I believe you told us on your direct examination that you were very friendly with Arthur Klein? A. Yes, I was, yes.

Q. You would not do anything to injure him, would you? A. No.

Q. You would do everything within your power to assist him? A. I certainly would.

Q. And yet when a man came to you trying to seek reemployment, expecting a youngster at any time, and pre-

sented to you a doctor's certificate, you did not see fit, posing as a friend, to give him the courtesy of reading his doctor's statement? 355

Mr. Conrad: Your Honor, I object to that. There is no answer necessary. There is no jury here. I mean it's a nice act but there is no jury.

Trial Examiner Ward: Sustained.

Q. (By Mr. O'Gorman) Now, after Mr. Klein delivered this second letter to you did you tell him that you would again ask Mr. Israel for his decision? A. No, there was nothing said about that.

Q. What was the last time that you spoke to Mr. Klein? 356
A. I think—

(162)

Q. Time and place, please. A. When he gave me that letter.

Q. The letter dated June 1? A. That's right. About that.

Q. Board's Exhibit 3? A. That's right.

Q. Yes? A. At the time I spoke with him in my office, not in my office, but I took him into the private office.

Q. You took him into your private office? A. Not in my private office. It happens to be the treasurer's private 357
office there.

Q. All right. And what did you say to him there? A. I didn't say anything. Mr. Klein did all the talking. He still insisted that he wants me to intercede with Mr. Israel for him to be put into order picking, that he likes the position and he doesn't like the shipping job.

Q. Yes? A. There wasn't much that I could say.

Q. What did you say? A. I didn't say anything. I hardly spoke anything. He's the one that did the talking.

358 Q. Tell us what you did say to him? A. I didn't say anything.

Q. You just accompanied him into a private office and

(163)

you remained mute while he did all the talking? A. All I said was, "What can I do for you?" And he did the talking. There was nothing I could say.

Q. And when he was through making that speech of his he just left without giving you an opportunity to respond? A. I shook hands with him, said good bye to him. I listened.

359 Q. Well, you said good bye? I want to know exactly what you did say, no matter how little? A. I didn't say anything there. I just listened.

Q. You just listened? A. Yes.

Q. You did not offer to intercede for him with Mr. Israel? A. Not the second time, no.

Q. Not the second time? A. No.

Q. Now, did you meet Mr. Klein outside of the premises at lunch hour that day? A. I didn't meet him. I was going out to lunch and he was standing at the curb.

Q. Yes? A. And he came towards me and walked me up

360 to the corner.

Q. Yes? And what did he say then? A. I really don't

(164)

remember what he said to me at that time.

Q. Did you say anything then? A. It wasn't very much. I really don't remember what he said to me. He just accompanied me. I think I walked towards 36th Street, I was going to a restaurant on 36th Street and Sixth Avenue, and he just walked me over to the corner.

that's all. He said something to me but I just don't recall what he said now. 361

Q. And was that the last time you saw Mr. Klein? A. I saw him hanging around. I saw him hanging around in front of the building after that.

Q. But the last time you spoke to him— A. That I really spoke to him was—

Q. Noon hour when you were walking up— A. He sort of came up towards me and we walked together towards the corner.

Q. And that occurred after your last interview with him? A. That's right. 362

Q. In the private office? A. That's right.

Q. When he did all the talking and you did all the listening? A. That's right.

Mr. O'Gorman: I see. That is all.

(Witness excused.)

(165)

Trial Examiner Ward: We will take a recess at this time, ten minutes.

(Short recess.)

Trial Examiner Ward: On the record. Proceed. 363

JULIUS ISRAEL was thereupon called as a witness by and in behalf of the respondent and, having been first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By M. Conrad) Mr. Israel, where do you live? A. 450 West End Avenue.

Q. Is that your full name, Julius Israel? A. Julius Israel.

364 Q. Are you an officer of the Regal Knitwear Co., Inc.? A. Yes, sir.

Q. What officer are you? A. Secretary.

Q. Do you know Arthur Klein? A. Yes, sir.

Q. Did you personally employ him? A. I did.

Q. At the time of the employment did he tell you that he was sick or had any hernia? A. He did not.

Q. Did you tell him that he was to do any particular

(166)

type of work in the place? A. No particular work.

Q. Do you know Jean Strackman? A. Yes.

365 Q. You heard her testify yesterday that you struck. Was it your habit to strike people around the place? A. No, sir.

Q. You heard her testity to that? A. Yes, sir.

Q. Do you strike people working for you? A. No, sir.

Q. Did you ever strike anybody working for you? A. No, sir.

Q. Did you have any conversations with Jean Strackman during the last few months of her employment? A. I did.

Q. Tell us the approximate time and the approximate conversations you had with her?

366 Mr. O'Gorman: I suggest that you give us the conversation instead of the approximate conversation.

Mr. Conrad: Your Honor, will he address his objections to the Court, Mr. O'Gorman? I do not talk to his witnesses.

Trial Examiner Ward: He may answer.

Mr. Conrad: I move to strike it out, move to

(167)

strike out what Mr. O'Gorman said.

Mr. O'Gorman: I again object to the form of the question. 367

Trial Examiner Ward: Read the question.

Mr. O'Gorman: We are not interested in approximate conversations. We want the conversation.

(Question read.)

Trial Examiner Ward: The objection is overruled. Counsel for the Board will have an opportunity to cross examine if it is not developed on direct.

Mr. O'Gorman: All right.

The Witness: It was a habit of mine to walk through my— 368

Q. (By Mr. Conrad) Just tell us what you said, not what your habit is, what you did. A. When I came along and would meet Miss Strackman I asked her to please try and take care of her work instead of conversations with other employees. This happened on many occasions. On the last conversation I had with her I asked her to come in my office and I told her I didn't think this place was suited for her any more, she wasn't going—I tried her in several different departments, and nothing seemed to suit her. And I advised her that it would be better for her to get another

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position. I told her I was going to give her several weeks' extra salary and until she could get another position I would pay her. That was the last time I saw her. On another occasion, before this, as I passed her she asked me why I had fired one of the girls? This startled me because it isn't a habit in our organization to fire anyone. And I says I didn't fire this person, she left for a better position. She says: "I don't believe it. I met the girl at lunch and she told me she was fired, and if you can prove to me that she

370 wasn't fired, anything you want me to tell you at any time I will tell you." So I asked her to come in my office and have her call up this particular girl she spoke about. I said I knew where she worked. She called up and I had her listen for the answer if she was employed. And afterwards she was startled to hear that the girl had left our place for another job.

Q. Mr. Israel, did you at any time show Miss Strackman a list of people who you claimed were members of the union, as she testified yesterday? A. I never had a list.

Q. Did you on other occasions change her from posi-
371 tion to position, you testified? A. I had to.

(369)

Q. What do you mean, you had to? A. She had a habit of talking too much and fooling around with the men that I had in the place, and it was impossible to keep her at one department.

Q. And how many times had you admonished her about being playful and talking and all those actions? A. I couldn't remember how many times.

Q. Was it many times? A. It was so many times.

Q. Did she always promise you to mend her ways and
372 stop the talking? A. She did.

Q. Miss Strackman testified that you distributed theatre tickets around the premises? A. I do.

Q. How long have you been doing that? A. For several years, during all times of the week.

Q. And how many tickets would you have at a time and distribute amongst your employees? A. Well, six or eight pair.

Q. And you would distribute them in sequence or how would you distribute, how would you pick out any particu-

lar employees to receive tickets? A. I asked the em- 373
ployees could they use these tickets, could they, for this

(170)

particular time; and whoever came first and could use them could have them.

Q. And these tickets were for regular Broadway shows? A. Why, they were not the best shows that were playing. They were given to me by a friend of mine. They were passes.

Q. And benefits and all that? A. Exactly.

Mr. O'Gorman: I object to the characterization. The witness just testified they were passes, made no 374
mention of benefits.

The Witness: Well, sometimes if I would have, if I bought benefit tickets for the Regal Knitting I would give them to the employees instead of using them myself.

Q. (By Mr. Conrad) You heard Miss Strackman testify that these tickets were always for Saturday afternoon. Is that correct? A. That would be impossible.

Q. Why? A. That was not correct.

Q. Well, what is correct? A. Because they were given to me, they are always given to me by a friend who has a 375
connection in the theatres with some treasurers of some theatres, and whenever they have any extra seats at about 5 o'clock in the evening or on Saturday mornings he will

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call me and ask me can I dispose of them.

Q. That is the first time you would get the tickets is the day of the show; is that right? A. Exactly.

Mr. Conrad: All right, that is all.

376 CROSS EXAMINATION:

Q. (By Mr. O'Gorman) You gave out tickets last night to some of your employees, didn't you? A. Yes, I did.

Q. How many did you give out? A. About six pair.

Q. For what performance was that? A. There were three for "New Faces" and three for "The Barber Had Two Sons."

Q. And you tell us that your friend calls up in the evenings that he has tickets remaining and asks you if you can get rid of them for him? A. Exactly.

Q. What time does he usually call you in the afternoons?
377 A. About 3 or 4 o'clock.

Q. 3 or 4 o'clock? A. And on Saturdays about 9 or 10 in the morning.

Q. How does he deliver those tickets to you? A. Over the telephone. He just gives me names, so that the party going could ask for those tickets.

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Q. And he leaves them at the box office? A. Exactly.

Q. And you just inform the employees to ask for the tickets left for Mr. so and so; is that it? A. Exactly.

Q. And do you pay for those tickets? A. Never paid
378 anything.

Q. You never paid for a ticket? A. They have to, each employee must pay a tax.

Q. Oh. A. On the ticket when they receive the ticket at the theatre.

Q. 10 per cent Federal amusement tax are you referring to? A. Whatever the tax happens to be. It's different every time. You never can tell what a theatre is going to charge.

Q. Now, Mr. Conrad mentioned benefit tickets. Will 379
you tell us how often you purchased benefit tickets? A. Well, a firm like the Regal Knitting Company will every few months be called on for charity organizations to buy some benefit tickets, and in many occasions the firm can't use them and will give them to the employees.

Q. Every few months. How many tickets do you usual-

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ly buy on those occasions? A. Well, if it would be a fighting tickets at sometime get as many as 12 or 15.

Q. Fight tickets? A. Yes.

Q. Madison Square Garden? A. Exactly. 380

Q. And you have distributed those to your employees? A. Exactly.

Q. How long have you known this friend that you refer to? A. Since I am in business.

Q. How many years have you been in business? A. Since 1919.

Q. And how long has your friend been in a position to obtain these tickets? A. 40 years.

Q. 40 years? And have you known him that length of time? A. I knew him since I'm in business.

Q. And that is 1919? A. He's in the same kind of bus- 381
iness as I am.

Q. He is? A. Similar line.

Q. A similar line? A. Yes. I purchase sweaters from him.

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Q. I see. A. He—

Q. He is one of your suppliers? A. That is right.

Q. And he does this to keep your good will; is that it? A. Yes, sir.

382 Q. I see. And you in turn hand them on to your employees? A. Correct.

Q. Now, how long have you been purchasing supplies from that friend? A. Since I am in business.

Q. Not only have you known him since that time but you have also purchased? A. Exactly.

Q. And he has been in a position you say for the last 40 years to get tickets? A. That's what I understand.

Q. And in spite of the fact that you are doing business with him since 1919, it is only in the last few years that he started to give you tickets; is that right? A. Well, he's
383 been giving them to many others. Since—for the last 40 years that was a habit of his. He has these connections. He has a brother-in-law who is the treasurer of one of the

theaters and in that way they seem to be able to get tickets for three or four theatres and—during the week. And he makes it a practice to give them out to his customers. Now, I wasn't such a big customer of his when I first went in business. We began very, very small. And as we grew and I became one of his larger customers he started giving me these tickets.

384 Q. When did you grow to that point, when did you reach that point that you became one of his— A. Well, I think it's about the last four or five years that I began giving him a really big business.

Q. The last four or five years. Now will you tell us what was the first year that you gave out tickets to any of your employees? A. Well, I couldn't possibly remember exactly.

Q. Was it two years ago? A. It was two or more.

Q. Two or more years ago? A. Yes.

Q. And you started to receive tickets from him four or five years ago? A. Exactly. I can't remember the exact dates. 385

Q. Well, who did— A. It never interested me to make note of it, what day he really began giving me the tickets, but I immediately gave them out whenever I got them.

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Q. Now, you tell us that Miss Strackman was a very unsatisfactory employee? A. In the last year or two that she was with us.

Q. You said she was talking to other employees? A. Yes, to an extent that annoyed the work of the other employees. 386

Q. Annoyed the work or the workers? A. The workers.

Q. Did they complain to you? A. They didn't have to complain to me.

Q. Please answer my question. A. No.

Q. No one complained to you? A. Yes, they did. I have several boys who are like foremens and they would come and ask me couldn't I get her to stop the conversations and have her do a day's work as others and not annoy the other help that was near her.

Q. Did they tell you what those conversations were? 387
A. No, they wouldn't know.

Q. Did they hear her conversing with other employees? A. They saw her.

Q. Could they hear her? A. I couldn't tell.

Q. They reported no conversations to you? A. The exact conversations?

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Q. Any conversations? A. They reported conversations but what they divulged they never told me.

388 Q. Were they close enough to hear the conversations, do you know? A. I couldn't tell.

Q. Well, did they just see Miss Strackman's lips moving while she was passing another employee? A. They would come to me and say: Now, our department is being disrupted, there's too much fooling around and kidding going on; you'd better get her out of this department. And from then on she was switched from one department to another.

Q. This started about two years ago? A. Yes, sir.

Q. Now, Miss Strackman has been in your employ for about 15 years, hasn't she? A. Yes, sir.

389 Q. And up until a period of two or three years ago was she a satisfactory employee? A. Yes, sir.

Q. She was one of your best employees; isn't that a fact? A. Not one of the best.

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Q. Where would you place her? A. I would say we had—

Q. In classifying your employees? A. I would say we had, we employ about 110 employees practically and she would be one of the 50.

Q. One of the top 50? A. One of the 50. There would
390 be 50 in that same category that she would be in.

Q. Just where in the 110 do the 50 belong? A. Well, you take 60 of them would be—that would have a little executive like the head shipping clerk or head stock clerk, order clerk, yarn man and down the line, bookkeeper, assistant bookkeeper, and then she would be in with the others that were doing—

Q. Production work would you call it? A. Production work.

Q. I see. Now, in that group of 50 where was she with

respect to the other employees? A. I would say she was 391
just like the other employees.

Q. She was an average employee? A. Exactly.

Q. And that continued up until the time she left the employ of Regal Knitwear? A. Up to two years, about two years before she left.

Q. Two years before. And then there was a sudden

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change in Miss Strackman; is that right? A. Well, she started to dress different, and she started coming in looking a little different and taking airs on.

Q. Hoity-toity you mean? A. Exactly. 392

Q. And how did she manifest that air that you describe? By talking to other employees? A. By talking to them and by her appearances.

Q. Describe her appearance. A. Well, take a look at her now.

Q. Was her appearance any different when she reported for work? A. That's just the way she came to work and that's the way she would work.

Q. Like that? A. Just about like that.

Q. Would her clothing prevent her from performing her duties? A. The duties that she would have 393
to perform, that would be no way to be dressed.

Q. Tell us why she should not be dressed that way? A. Because the work isn't such clean work. We've got boxes that might be dusty, and the handling of the goods might soil the clothes and I wouldn't think that that would be the way to do any kind of work.

(180)

Q. Well, now, you tell us the— A. In the stock room.

Q. You tell us the complaints you received from the

394 foremen, or the foremens as you describe them, were to the effect that she was talking? A. That's right.

Q. Any other complaints? A. Why, that her talking brought on a lot of fooling around, if you know what I mean.

Q. No, I don't. I should like to know what you mean by fooling around. A. Well, when a girl comes in that way to dress, when she comes to work that way and you've got young fellows working right near her, it kind of—and they begin conversations, one thing leads to another and it distracts—her clothing, her make-up distracts from a day's
395 work.

Q. So would you say it was a mental hazard for the other workers for her to dress that way? A. I don't think it was a good thing, for the Regal Knitwear Company.

Q. But— A. Most of our girls are dressed in smocks.

Q. Now let us go back to the nature of the complaints from the foremen. The foremen's complaints to you and the only complaints they made were to the effect that she

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was talking to other employees, and from your observation you noticed that her apparel tended to disrupt the
396 morale among the male employees? Is that right? A. Exactly.

Q. I see. Have you had any experience in dress business, Mr. Israel? A. No, sir, except for the—for our own business.

Q. Except for your own business? A. Our business is knitted outerwear, which is—

Q. Knitted outerwear? A. Yes.

Q. Sweaters and things? A. Which is also an outer dress.

Q. An outer dress? A. Yes. 397

Q. Well, then you know what types of outer clothing have a tendency to disrupt the masculine morale? A. I think I have.

Q. And this experience of yours dates over how long a period of time? A. Well, I should judge for the last 15 or 20 years.

Q. 15 or 20 years? A. Yes.

Q. You have observed the effect that certain types of outer clothing have upon the masculine sex?

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Mr. Conrad: Your Honor, I object to that form 398
of question. I do not think it is within the issues here. He is talking about this particular girl. We are not talking about the world. Different girls affect different men differently.

Trial Examiner Ward: He may answer.

Mr. O'Gorman: Please answer that question.

Trial Examiner Ward: Read it.

(Question read.)

A. I observed that it does have effects on the masculine class. A girl for instance wearing a short skirt or very sheer stockings or a lot of make-up will affect the male. 399

Q. (By Mr. O'Gorman) And where did you obtain that experience upon which you predicate your findings?

Mr. Conrad: Your Honor, I do not think he has to answer that, and I certainly object to that.

Mr. O'Gorman: I submit I am entitled to probe this witness. This is cross examination, your Honor.

Trial Examiner Ward: The Examiner is liberal on cross examination but there is a limit. I am going to sustain the last objection.

400 Mr. O'Gorman: May I be heard, Mr. Examiner?

Trial Examiner Ward: Proceed. I have ruled.

Q. (By Mr. O'Gorman) Do you do any advertising, Mr.

(183)

Israel? A. Very little.

Q. Do you have the sweater girl ads? A. No.

Q. In your advertising? A. No. We only have infants' wear, infants' knitted outer wear, infants' and children's knitted outerwear, up to 12 year old.

Q. So you do not handle any adults' clothing at all? A. No, sir. No, sir.

401 Q. Well, then this observation you made based upon your experience is— A. Personal.

Q. —obtained outside of your business; it is your personal experience? A. Exactly.

Q. I see. Now, do you recall the time that Miss Strackman referred to when she was in your office in August, 1941; do you recall that incident? A. Well, I can't recall the date.

Q. But you recall the incident? A. Well, what was the incident?

Q. She was there and had some discussions about her
402 leaving the union? A. I never discussed the union with her.

(184)

Q. Well, what did you discuss on that occasion? A. I don't remember if that's—there's only one occasion I had with her and that was the telephone call we spoke about before.

Q. Is that the only time she was ever in your office? A. The only time she was ever in my office that I can recall.

Q. Do you have a good memory, Mr. Israel? A. Fairly

well. There was another time that I mentioned before, 403
was when I asked her to look for another position.

Q. Mr. Israel, did you ever request Jean Strackman to wear a bathing suit in your place of business? A. I can't recall.

Q. You sell bathing suits, do you not? A. Yes.

Q. And isn't it a fact that you have on more than one occasion had models display bathing suits in your place of business? A. Yes, yes, we had professional models.

Q. But you cannot recall ever asking Miss Strackman to wear a bathing suit? A. No, sir.

Q. Do you deny that you ever did? A. I never did. 404

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Q. You never asked her to— A. I never asked her to wear a bathing suit.

Q. —pose in a bathing suit? A. No, sir.

Q. Is it not a fact, Mr. Israel, that Miss Strackman posed in a bathing suit and was photographed in it for the purpose of having the picture used in an advertising campaign being conducted by your firm? A. It's something I don't know anything about.

Q. Do you deny that occurrence ever having taken place? A. If it ever occurred it was without my know- 405
ledge or without my ever hearing about it or knowing about it.

Q. I believe you have a father, do you not, Mr. Israel A. I'm sorry to say he passed away, he should rest in peace, two years ago.

Q. Two years ago? A. Yes.

Q. Before that time do you know if your father was handling the pictures to be used in advertising campaigns? A. My father never had anything to do with anything in

406 the Regal Knitting Company besides just spend his time there.

Q. Did your firm at one time sell little skull caps to match bathing suits? A. Yes.

Q. And did you in the course of your advertising cam-

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paign show pictures of girls wearing bathing suits and those caps? A. I can't recall if the girls were wearing the caps.

Q. Do you recall the girls wearing the bathing suits? A. Yes.

407 Q. I see. Now let us go back to the summer of 1941— A. Now wait a minute, before we go to that. On this here advertising that you just asked me about, we have an advertising concern and we expect them to have their own models model the suits. As far as I know, no one ever in our institution modeled a suit for this advertising firm or anyone in our place ever had a picture taken in a bathing suit for the benefit of Regal Knitting.

Mr. Conrad: Your Honor, in this connection may I at this time note for the record that Miss Strackman is a—well, I don't know how you would call a

408 blonde not a natural blonde, that she is what they call a bleached blonde. I think that we should give a picture, at least the entire picture, as long as we went into it.

Mr. O'Gorman: I object to this characterization. I don't know whether Mr. Conrad now holds himself out as an authority on feminine pulchritude.

Mr. Conrad: I didn't say I was, but I think I know what hair is, and I think it goes toward the en-

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tire setup and I think it should appear in the record.

Mr. O'Gorman: I thought he was a lawyer, not a 409
hair-dresser.

Trial Examiner Ward: Let's have it quiet, please.

The Examiner does not see the materiality of whether or not the claimant is a natural or other type of blonde so far as the issues are concerned here. The thing that the Examiner is interested in is whether or not she was discharged for union activities.

Mr. Conrad: That is right.

Trial Examiner Ward: That is the only issue I am interested in.

Mr. Conrad: That is right, except that this testi- 410
mony that Mr. O'Gorman has brought out really goes to the basis of why she was discharged and he has gone pretty thoroughly into the question of appearances, and I think the record should show full appearance, and I think it is an element.

Trial Examiner Ward: Proceed.

Q. (By Mr. O'Gorman) Now, Miss Strackman has testified here yesterday in your presence, I believe, that she was in your office, was called into your office in the month of August, 1941, at which time you asked her about her union activities and on the occasion of that visit to your of- 411

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fice an occurrence took place which she described as a partial choking, and then she said that she was distressed and you became sympathetic and kissed her, I believe. Can you tell us when that episode took place? A. Well, you said it was in August.

Q. Was that the month it took place? A. I couldn't remember.

Q. You don't remember that? A. The month.

412 Q. You don't remember the month? A. No.

Q. Well, do you remember the episode? A. I told you what the episode really was.

Q. Suppose you tell us again what the episode was. A. There was two occasions that I can remember and which I really believe is still right, that I had her in my office. The first one was as I was walking through the stock room she mentioned to me why did I fire a certain girl by the name of Sylvia. I was startled. I said, come on inside a minute. Who told you this? She says, I met Sylvia and she said you fired her. I says, you know, you have been here many
413 years, we don't fire anyone. From the people you have seen here, most of our people stay as long as they like, whether

it's ten years, 15 years or 20 years, and if you looked up our records that's how they read. Now, I said, I didn't fire Sylvia. She says, I met the girl, we had lunch, she told me you fired her. I says, that girl told me she was getting another job and she gave me the address of the job, I says, and to prove to you that she—that that is the truth, I says, I'll have you call her up. And immediately we called on the telephone and before I heard the answer I says, now
414 you listen to this and see who answers this phone. And it happened that this particular girl answered the phone. And she says, you working there? And then I said, do you like your job there? And I let her listen to the answer. I didn't listen to the answers. Well, she started to cry when she heard that, that a girl had done that to her. And I said, now, listen, forget about it; things like that will happen in life: just forget about it.

Q. And was that the reason for your consoling her at the time? A. Exactly.

(190)

Q. That is why you kissed her? A. Right. 415

Q. So that— A. I just wanted her to know I didn't want her to feel any worse than she was and I thought, well, she will get over this and from then on maybe she'd be loyal and a real good worker to the Regal.

Q. Has that been the usual effect of your kisses in the past, Mr. Israel? A. I think it's the first time I ever kissed anybody working for the Regal Knitwear Company.

Q. Well, you expected the kiss to result in placating or in making a good—

Mr. Conrad: I object to that. 416

Mr. O'Gorman: I think this is material.

Trial Examiner Ward: Just a minute. Read me the question.

(Question read.)

Q. (By Mr. O'Gorman) —employee out of her?

Trial Examiner Ward: He may answer that.

The Witness: It was the first time that an incident of this ever occurred and it's the first time I saw a girl start crying over this kind of incident and I tried to—I thought that might console her for the moment.

Q. (By Mr. O'Gorman) So then the effect you expect- 417
ed from that kiss was just momentary consolation?

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Mr. Conrad: I object to that, your Honor.

The Witness: Exactly.

Mr. Conrad: The question of effect of kisses—I don't know what they are. Different effects.

Trial Examiner Ward: He may answer it. He has answered I guess.

Q. (By Mr. O'Gorman) Now, has that been the usual

418 result of your kisses in the past, Mr. Israel? A. I told you it was the first time I ever kissed anybody in our place.

Q. Yes, so I understood, but I am talking about your experience outside of your place of business.

Mr. Conrad: Your Honor, I object to that.

Trial Examiner Ward: I will sustain that.

Mr. O'Gorman: Now, Mr. Examiner, —

Trial Examiner Ward: Proceed.

Q. (By Mr. O'Gorman) Now, about that choking that Miss Strackman referred to, will you tell us what took place to let her characterize it as a choking? Would you de-
419 scribe your gesture that she called choking gesture? A. I described the incident exactly as it happened.

Q. She answered the phone— A. I had her listen. I put the receiver to her ear so that she would know the truth of the matter, that I had not told this girl, I didn't know

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anything about this, and I took the receiver and let her hear the conversation instead of I hearing it.

Q. I see. And you tell us that after hearing that she dropped the phone, burst into tears? A. Exactly.

Q. And your observation was that it must have been a
420 severe shock to her, hearing a girl let her down like that or misleading her, and then you for the purpose of consoling her kissed her? A. Well,—

Q. Is that what happened? A. It wasn't exactly as you say. But I should think anybody in this room under the same incident that was out with a person the day before and was told that they were fired and not working, and the next day you called them on the phone and they answered the phone and said they were working, I wonder how the feeling of

anybody in this room would be at that moment, and then imagine her feeling. 421

Mr. Conrad: Just answer the questions, Mr. Israel.

Q. (By Mr. O'Gorman) And you felt sorry for Jean at the time? A. Yes.

Q. Well, now, it has been testified here that you financed an extra vacation for a number of your employees,

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I believe, if my memory serves me right, that two trips were made to Florida? A. Right.

Q. Will you tell us what time of the year that took place? A. I had read in the paper that the Heinz Company had decided to send all their employees to Florida for a Florida vacation instead of a summer vacation, that they would be most benefited by it; and I thought that was a wonderful idea and I asked our employees who would like to go to Florida, and all those that could get away went. And it happened that Jean happened to be one of them that went. 422

Trial Examiner Ward: Fix the date of that. I guess it's in the record but—

Mr. O'Gorman: It appears the winter—

The Witness: Exactly, sometime in the winter. 423

Q. (By Mr. O'Gorman) Can you give us the month? A. Well, I couldn't tell you. I can't recall if it was December or January.

Trial Examiner Ward: What year?

Q. (By Mr. O'Gorman) 1941? A. I can't remember if it was '41 or '40. I can't remember.

(194)

Q. Well, it was the winter of '41 to '42, was it not? A. I can't remember exactly.

424 Q. Was it a year ago last winter? A. Well, maybe she could tell you. She was there. Maybe she could tell you exactly what year it was.

Q. I believe it appears in the record it was the winter of '41 to '42. Now, what did you read about the Heinz Company? A. It was in the paper, the newspaper that they thought they would benefit a great deal by giving their employees two weeks' Florida vacation in the winter time instead of the summer and that they would have a chance to see Florida and come back and it would benefit the firm.

Q. I see. In other words, then, you gathered from the
425 article you read that an employer would benefit by increasing the efficiency of his employees— A. Not only—

Q. —if he gave them a winter vacation in Florida; is that right. A. Not only that. There were several of our employees, one was this Moe Lawsky that you had here this morning, that went to Florida for several years and we saw the benefits it did him and the rest of these people that went down there, saw how much good it did them, that they all would have loved to have made the trip could they get away.

Q. I see. And so with a view of increasing the ef-
426 (195)
ficiency of the employees, you decided it was the wise thing to do to give them an extended vacation to Florida that winter? A. It was the two week vacation they were entitled to.

Q. Well, had those employees enjoyed their summer vacation? A. I imagine they would have.

Q. Well, did they or— A. Well, I—

Q. —didn't they? A. How would I know that? How would I know some people going on a vacation and being

away from me for two weeks, whether they were enjoying it or not?. 427

Q. That was not my question. Had those people gone on their summer vacation prior to going to Florida? A. How could I tell that? Perhaps it would be raining there for two weeks and they didn't enjoy it.

Mr. Conrad: He did not ask you that.

Q. (By Mr. O'Gorman) Mr. Israel, that is not my question. Just pay attention to the question. If you do not understand it I will try to clarify it. Was it not a fact that most of your employees had enjoyed vacations during the summer of 1941? 428

Trial Examiner Ward: In other words, taken vacations.

(196)

The Witness: Until I read this article everyone had a summer vacation. Some—

Q. (By Mr. O'Gorman) Yes. Now, when did you read—

Mr. Conrad: Let him answer it.

The Witness: Some of them would want a winter vacation. Those that wanted a winter vacation, even years before, as I told you, this Moe Lawsky for 429 years and several others who have picked out a winter vacation would have a winter vacation if they'd rather have it. We didn't stand on ceremonies when they must take a vacation.

Q. (By Mr. O'Gorman) Can you tell us what time of the year it was that you read that article about the Heinz Company? A. It was about the month of October of the year that I decided that they should go.

Q. It was about October. It was in the fall of 1941? A.

430 And I don't remember which year exactly this moment but whatever year they went, that was the fall.

Q. And was that your automobile that they used? A. It was one of the firm's.

Q. One of the firm's down there? A. Yes.

Q. And can you tell us how many people in all you sent

(197)

to Florida that year? A. Five.

Q. At each trip? A. On one trip.

Q. Wasn't there a second trip? A. The second trip did not want to go to Florida. They went to the mountains.

431 Q. They went to the mountains?

Trial Examiner Ward: Was that a winter vacation too?

The Witness: That was a winter vacation too.

Q. (By Mr. O'Gorman) Winter vacation. Now— A. One of the boys' mother owned a hotel in the mountains somewhere and he asked me would I allow the car to go up to the mountains instead of Florida, and I agreed.

Q. You agreed? A. Yes.

Q. Although what led you to endorse a winter vacation plan for Florida? A. I thought that would be best for

432 them.

Q. You did? A. I had been going down there myself for many years and knew how good it was and I saw these other people in our place of business that did go down and all benefited by it and I suggested whoever wanted to should do the same thing.

Q. But in spite of the fact that you believed Florida

(198)

was the best place, you permitted a number of your employees to use the firm's car to enjoy a vacation in the

winter in the mountains? A. There were four boys who 433
had decided that one of them wanted to visit his mother and the others, they explained to me it would not cost them anything if they went up to the mountains, and I agreed that they could go there if they choose that.

Q. All of these employees received their salaries while they were away? A. That was their—their vacation.

Q. Paid vacation? A. Paid vacation.

Q. I see. Now, did you call a number of your employees into your office in the summer of 1941? A. I can't recall.

Q. You say you did not? A. I can't recall it.

Q. Are you acquainted with an employee by the name 434
of Matzney? A. Don't remember his name. Do you know his first name?

Q. I believe it was Walter. A. Yes.

Q. And did you ever talk to him in your private office? A. Yes.

(199)

Q. Tell us the nature of the conversation you had with him? A. He complained to me about his father.

Q. Yes? A. Who was a refugee.

Q. Yes? A. And I tried—he said his father couldn't get employment, and asked me if I would do something for 435
them. And on several occasions I tried to get the relief societies to help him.

Q. Anything else? A. It was always along the same lines, whenever I spoke to him. I couldn't tell you how many times but it was usualiy along the some line.

Q. Did you not as a matter of fact write letters of introduction for his father? A. I don't think I ever wrote a letter.

436 Q. Are you acquainted with Kahn's Employment Agency? A. Yes.

Q. Do you deny ever writing a— A. Well, I might have. His father now works for us.

Q. He does work for you now? A. He does work for us. And Walter—

Q. Mr. Matzney, do you recall that he was a good em-

(200)

ployee? A. The boy?

Q. Yes? A. Yes.

Q. Do you recall telling him that he had a bright future
437 in store for him with your plant? A. Yes. I tell that to all the—

Q. Provided he would leave the union? A. I never talked union to anyone.

Q. And didn't you as a matter of fact tell him that if he would quit the union you would attempt to get employment for his father? A. I never knew he belonged to the union.

Q. Do you deny that he was in your office on August 21, 1941? A. I don't remember the date he was in my office.

438 Q. But you do know that he had a father who was a refugee? A. His father had been down to see me several times.

Q. And you do know that he had a bright future in store for him, you remember telling him that, but you do not remember telling him that he had that bright future provided he would leave the union— A. I—

Q. —and if he did you would write letters or attempt

(201)

to get his father employment? A. When that boy first

started working for me I tried to get employment for his father, and I never spoke union activities to anybody in our employment. 439

Q. Do you recall Mr. Stein testifying here yesterday? A. Yes, sir.

Q. Did you attend that luncheon he referred to? A. I did.

Q. Did he testify to what took place at that luncheon? Was his testimony correct? A. Well, I couldn't remember the entire testimony right now. I think it was correct.

Q. You did? And he told you that you had certain beliefs or fetishes about unions that— 440

Mr. Conrad: Your Honor, I object to that as not what he has testified to.

Mr. O'Gorman: The record will bring out the truth.

Trial Examiner Ward: The record—

Mr. O'Gorman: I do not have the copy before me.

Q. (By Mr. O'Gorman) You recall him telling you that? A. Well, I think whatever he said was the truth.

Q. It was the truth? A. Yes.

Q. That you do have certain beliefs about unions; is that the truth? A. There is very little I know about unions. 441

(202)

Q. Do you know of certain businesses where the unions moved in and control the business afterwards? A. No.

Q. None of your business acquaintance never complained of that, did they? A. Not that way.

Q. How did they complain about it? A. Well, they might say that they were running under—with a union in their place.

442 Q. And what else would they tell you? A. I don't think the average business man would tell his business to anyone. It hasn't been my experience to be—to speak to, discuss my business with anyone or have them tell me their running of—their really running of their business. I think that would be personal business. You might hear somebody say, well, we have a union place or we haven't got a union place, and discuss one or two things, but I don't believe the average business man would go into real details, telling one firm or the other what was going on, the same as Macy wouldn't tell Gimbel's what was going on between them.

443 Q. Or the Cabots speaking to the Lodges. Now, Mr. Stein also testified to the effect that you thought you should not bother about the union contract until after the war,

that we are engaged in the war effort and we should forget about unions during wartime; is that right? A. Right. I told Mr.—

Trial Examiner Ward: Just a moment.

Mr. O'Gorman: Just a second.

Trial Examiner Ward: Where is that material under the issues here? We have had no 8(5).

444 Mr. O'Gorman: It it not 8(5), Mr. Examiner, but I think the materiality will make itself apparent in a minute if I am permitted to continue this line of examination without disclosing my reason.

Trial Examiner Ward: Preliminary questions, proceed.

The Witness: I explained to Mr. Stein that our boys were all in the draft age and he or nobody else could tell me what was going to occur in the next

few months and it was—it wasn't the right time to make any other arrangements in anybody's business, considering the amount of boys we have in the draft age and who we'd lose momentarily. And since that time, for the information of everybody, we have lost two thirds of the men help in our place. 445

Q. (By Mr. O'Gorman) Now, is that the reason why you told Mr. Stein that you did not believe unions should organize during wartime? A. My reason—I didn't ex-

(204)

actly say that. I told Mr. Stein that this was not the time to speak about any other way of running our business, owing to the fact that he couldn't guarantee our holding these people that we've got, due to the war, that anybody that had to go would have to go, we wouldn't hold them back. 446

Q. So you believed that the conditions that existed because of the war were such that you should not change your method of dealing with your employees?

Mr. Conrad: Your Honor, I object to that. I think we have allowed this to go pretty far and if he has any preliminary things he has certainly stated his feeling and the conversation on the subject. I think he has already answered that. There is no sense to it. 447

Trial Examiner Ward: Whatever his real feelings, he is entitled to them.

The Witness: Not only that—

Trial Examiner Ward: Just a moment. But he may answer that question and then we will—

The Witness: It wasn't only my feelings but it proved itself by now we have lost two thirds of the men help that we have had.

448 Trial Examiner Ward: Well,—

The Witness: Those are facts.

Trial Examiner Ward: Just a moment. Read the question.

(205)

(Question read.)

Trial Examiner Ward: You can answer that yes or no.

The Witness: Yes.

Q. (By Mr. O'Gorman) And you believed it was not the time to deal with the union?

449 Mr. Conrad: Your Honor, I object to that. I think he has covered everything. He has wanted some preliminary questions. I don't know what preliminary statement he is trying to make.

Mr. O'Gorman: Suppose you let me try my case and you try your own.

Trial Examiner Ward: He may answer. Proceed. Read the question.

(Question read.)

The Witness: I believed it was not the time to deal with anything different than we had been doing, owing to the war conditions.

450 Q. (By Mr. O'Gorman) All right, now let's get back to two years ago. I believe you testified to the effect that your father had died about two years ago? A. I wish you wouldn't mention that.

Q. I am sure I do not wish to bring any unpleasant memories to you— A. Well, if you ask this little girl here, you ask Jean, she will give you the reason for that.

(206)

Trial Examiner Ward: Let's leave those matters out. It is not material here.

Mr. O'Gorman: Mr. Examiner, it has been testified here on direct examination by Jean Strackman that on the occasion of her visit to Mr. Israel's office in August, 1941, he asked her to swear on the grave of his father that she would quit her union activities. I think the time element and the fact that the death of his father did take place prior to that incident tends to corroborate Jean Strackman's statement. 451

Mr. Conrad: I disagree—

Mr. O'Gorman: And I believe that—

Trial Examiner Ward: There is no— 452

Mr. Conrad: I disagree with that. It is just one of the elements in this whole fixed up case that you have here, Mr. O'Gorman, and that is one of the elements. It is no different. He has already answered that and she has answered.

Trial Examiner Ward: Proceed.

Q. (By Mr. O'Gorman) Now, what union was attempting to organize your workers in the year 1941? Do you know the name of that union? A. Now I don't remember the dates but there was only one union that ever spoke to us and that was Mr. Stein.

Q. That is not my question. My question was what was 453

the name of the union that was attempting to organize your workers in the year 1941? A. As I said before, I don't remember the date but it was Mr. Stein and he said he represented the shipping clerks and stock clerks of 65, warehouse of 65, something to that effect.

Q. Was that the same union that was attempting to organize your workers in the year 1941? A. I told you

454 I didn't remember the date, and I told you that the only thing, the only conversations I had about union activities with anyone outside of our business was with Mr. Stein and a Mr. Brody that they had.

Q. They were the only conversations outside of your business? A. Right.

Q. What conversations did you have inside of your business? A. Well, I meant in and out.

Q. Did you talk to Mr. Roll about unions? A. No, sir.

Q. Mr. Green? A. No, sir.

Q. Now, are you acquainted with Katherine Lomar?

455 A. Yes, sir.

(208)

Q. Ruth Smilowitz? A. Yes.

Q. Sylvia Abrams? A. Yes, sir.

Q. Herman Bogad? A. Yes, sir.

Q. Ralph Piccolo? A. Yes, sir.

Q. Were they employed by you in the year 1941? A. Yes, sir.

Q. Do you recall speaking to each and every one of your employees in your office in the month of August, 1941? A. I didn't have none of them in my office, none of them.

456 Q. You deny having any of them in your office at that time? A. Right.

Q. Now will you tell us—I do not believe you have told us yet, why did you discharge Jean Strackman? A. Jean Strackman had been working for us for many years, and in the last few years she worked for us her work was not up to par. She started to dress different. She started to look different, and she took on airs upon herself. I thought, owing to the fact she worked with us so long, switching her from one department to another I could stop this. But

(209)

it was no use. I couldn't possibly stop it. Whenever I went through, they were carrying on, she and the people that she worked near were carrying on. And I called her in my office later on and I says: Jean, I've been thinking about you a long time and I've come to the conclusion this is not the place for you. I says: Now look, I want you to try to get another position. I'm going to give you a few weeks' salary in advance, so you are not left without any money, so you are not left without your weekly pay, and if you don't get a position I will also pay you; but this is not the place for you any longer; you've outgrown this concern. At that time, the very next day I left for Florida. That was the end of the conversation. 457 158

Q. So you did leave for Florida the day after your conversation with Miss Strackman? A. Yes.

Q. But your foreman only complained that she was talking. This is the first time that you have mentioned any inefficient work. You have emphasized the way she dressed, but this is the first time you have told us anything about her work. A. All that led up to inefficient work. All the carryings on I told you before, her dressing, her looks and her conversation led to the people surrounding her to inefficient work. 459

(210)

Q. Who determined the quantity and the quality of the work of Miss Strackman? A. We have several boys who are considered foremens, and one of them happened to be Abe Schwartz and another one happened to be Tom McCusker who you have heard about.

Q. And they would be acquainted with the quality of her work? A. Exactly.

460 Q. And they reported to you that she was talking—
A. That was besides myself who was always—without a a vacation was always in the place. Except when I had a vacation and went for lunch I was always on the premises.

Q. Except when you had a vacation you went to lunch? A. Or that I went for lunch.

Q. Oh, I see. And in spite of the fact that for the last two or three years she had changed her dress, was disrupting all the other male employees in the place, it was not until the spring of 1942 that you finally discharged her? A. I asked her, for the benefit of both of us, to try
461 and get another position.

Q. Are you acquainted with Mr. Benedict? A. Yes.

Q. Will you tell us who Mr. Benedict is? A. He is one of the Kahn Employment Agencies.

(211)

Q. What do you mean, he is one of the Kahn Employment Agencies? A. He is one—I think he is one of the owners or one of the directors. He happens to belong to a social club with me and I've met him through that.

Q. Personal friend of yours, isn't he? A. Exactly.

Q. And he is a man that you talk to when you wish to
462 place some of your employees in other businesses; is he not? A. He never—we never had a conversation of that kind.

Q. Wasn't Sylvia Abrams placed through Mr. Benedict? A. No, sir.

Q. Who obtained the other position for Sylvia Abrams? Sylvia Weinfeld? A. I couldn't tell. She came to me and told me she had received a better position.

Q. Do you deny that Mr. Benedict was the one that obtained that position? A. Well, I don't deny it but I

don't believe it was and I think—I don't know anything about it. 463

Q. Now, didn't you send Mr. Matzney's father to Mr. Benedict? A. Yes. When Walter first started working with us and told me about his father, he had his father

(212)

come down to see me and I felt sorry for him and I knew Mr. Benedict having an employment office. I said if you go over to Mr. Benedict, mention my name and anything he could possibly do for you he will do. That's as far as I can recall on that.

Q. I see. Now, you mentioned the fact that Miss Strackman in the course of her duties would be required to handle dusty boxes? A. Well, our boxes become dusty. They can't be helped. The windows are open and dust will accumulate. 464

Q. I am not criticizing that condition. A. Yes.

Q. I am just repeating your testimony. A. But everyone must handle it.

Q. And she came to work every day dressed similar to the attire she is dressed in now? A. Exactly.

Q. And was she immaculately dressed every day she appeared? A. I consider her immaculately dressed. 465

Q. Yes. And— A. But not—

Q. Did you notice any dust on her clothes? A. But not for the kind of work that we had to perform. She was

(213)

dressed immaculate but not for the kind of work she should do in our concern.

Q. O. K. Now, did she have an extensive wardrobe from your observation? A. Well, I didn't make note of how extensive her wardrobe was, but it wasn't fitting in my estimation for the work she had to perform.

466 Q. And what was her salary at that time, Mr. Israel?
A. Well, I think she mentioned that and I'll take it to be correct. I couldn't possibly remember.

Q. Wasn't it $19 a week? A. Now, whatever she said I'll take to be correct.

Q. I see. And can you tell us from your experience in handling outer garment wear whether or not it would be necessary to resort to dry cleaning to remove dust from the type of dresses that Miss Strackman was wearing when she reported to work? A. Well, I think that would be more up to the individual, how they wanted to clean their
467 clothes. I couldn't be responsible or tell anyone how to do that.

Q. Well, aside from the individual's desires, would that be the usual way to clean dust from the type of garment she was wearing to work every day? A. Well, in all my experience I have heard of people cleaning their own clothes, taking all kinds of fluids and being able to clean

(214)

I have heard of people sending them to cleaners. I have heard of people washing them. And I don't think you can judge two people doing the same thing with their clothes.

468 Q. That's right. Now I go back to my question. Would it be necessary to use some method of dry cleaning, whether you do it yourself at home, in a public park or have a dry cleaning establishment do it, to clean the dust from the type of clothing that she was wearing to work every day?

Mr. Conrad: Your Honor, I object to this type of questioning. I do not know what he is leading to. He has not testified to any dry cleaner.

Trial Examiner Ward: Sustained.

Mr. O'Gorman: Off the record.

Trial Examiner Ward: Off the record. 469

(There was a discussion off the record.)

Trial Examiner Ward: We will take a five minute recess, at this time.

(Short recess.)

Trial Examiner Ward: On the record. Proceed.

Q. (By Mr. O'Gorman) Mr. Israel, Mr. Klein has testified to the effect that he was in the shipping department and he was instructed by you to remain there and do the work there. Can you tell us what time in the afternoon

(215)

that conversation took place? A. I would judge that 470
would be about 2 P. M.

Q. 2 o'clock in the afternoon? A. Yes.

Q. And do you recall the instructions you gave him at that time? A. Well, I had happened to—we were very busy that day.

Q. I see. A. And I happened to be working there with several others and I—he just walked in there with some merchandise and I says, "Arthur, stay here and give us a hand." And just like all the others, he pitched in and helped us along that day.

Q. Now, were there any others assisting in the ship- 471
ping department that day? A. Well, there may be one or two other stock boys.

Q. Well, do you recall any other being in there that day? A. Well,—

Q. If you do. A. I don't recall now.

Q. Was that the last time that you spoke to Mr. Klein? A. No, there was once more after that.

Q. Will you describe that occasion for us? A. The following morning after this day, I was sitting in the show room.

(216)

472 Q. Yes? A. And he walked into the show room.

Q. Yes? A. And he says to me: I'm not going to—I can't work in that shipping room. I'm a sick fellow and I can't work there. I said: Now look, don't you argue in here. This is not the place to talk that way. We had some people in there and it's our main selling place. I said: Now you go outside and do what you were told to do. And he says: I'll report this to the National Labor Relations Board. And I says: Arthur, you can do as you please but go outside and do what you were instructed to do.

473 That was the last conversation I ever had with him.

Q. Was that the time that he told you that he was being discriminated against, that he was going to report it to the Board for that reason? A. He said he was going down to the National Labor Relations Board.

Q. I do not think you understand my question. Was that the same time that he had complained to you that he was being discriminated against? A. Well, I don't ex-

(217)

actly remember every word of the conversation.

Q. And that conversation took place in the presence of

474 another man? A. Not only another man but we had some customers in the show room, besides some of our selling force.

Q. Yes. Now, was it after that conversation that you informed Mr. Lawsky that Mr. Klein was to remain in the shipping room? A. I never spoke about Mr. Klein, about any of his duties after that day. That day happened to be Saturday. We had only a few hours to go. And that was the last day I ever saw Arthur in our place.

Q. Well, now, the Friday before that Saturday was the time that you— A. The day before.

Q. —instructed Mr. Klein to work in the shipping department? A. That was 2 o'clock the day before. 475

Q. Before Saturday? A. No, before this day that we had the second conversation.

Q. The second conversation took place Saturday morning? A. There was a period of about six hours, working hours.

Q. It took place Saturday morning? A. Exactly. Al-

(218)

together a period of about six hours of working hours.

Q. I agree with you. No dispute on that. But it was the Friday before that Saturday— A. Exactly. 476

Q. —at about 2 o'clock in the shipping room when you instructed Mr. Klein to work in the shipping room? A. Exactly.

Q. Now, was it after you spoke to Mr. Klein that you instructed Mr. Lawsky to have him continue working in the shipping room, was it later that afternoon? A. I didn't have to give any more instructions. As Mr. Lawsky told you this morning, if he wanted somebody to help him he had the right to ask them. And it was only accidently that I asked Arthur to stay there. He happened to come in the shipping room while I was there. 477

Q. I see. A. And he willingly and without a murmur assisted.

Q. I see. A. Until the following day, the following morning when he come in and complained to me.

Q. Then it was you that instructed Mr. Klein to work in the shipping room? A. Yes, sir, that day, that Friday.

Q. That Friday? A. Yes. I asked him to assist there,

(219)

right then and there as he walked in.

478 Q. I see. And then it was not Mr. Tom McCusker that told him to work in the shipping room? A. Tom McCusker is one of the head men of our place, in charge of the help. There will be times when you have to consult him. He might have some people doing some important work, and if you were to disrupt that work it wouldn't be fair for him or the organization; so you might ask him. If Moe Lawsky could figure out that the boy wasn't doing something absolutely necessary, he would ask him to assist in the shipping department.

Q. Now, Mr. Israel, my question was directed to the
479 particular occasion.

Trial Examiner Ward: Read the question.

The Witness: On that occasion I—

Trial Examiner Ward: Just a moment. Read the question.

(Question read.)

The Witness: I just told you the story of exactly how it happened.

Q. (By Mr. O'Gorman) That you told him? A. Yes.

Q. I see. Then your answer to my question was not Tom McCusker, it was you? A. Yes.

480 (220)

Q. Now, Mr. Klein has also testified to a conversation that took place between you and him sometime in April 1942. I believe he stated it was a day or two after he had received a $2 raise and he had been transferred to the position of order picker. Do you recall that conversation? A. I had been walking through the place and I passed the spot he was working and he says, I want to thank you for that increase. And I said I hope—I said I was glad you got it, and I hope you'll be deserving of it and continue your good work.

Q. And was that the time that you told him that in case 481
he needed a friend or in the event he required money at the occasion of his expected child, that you would be glad to help him out? A. I don't believe anything else was said at the particular conversation.

Q. Do you deny making the offer to assist him in the event he needed financial assistance? A. I only knew him for a very few weeks, and I deny that I said that and don't believe that I would think of saying it, owing to the fact that I knew him such a short time.

Q. Do you recall telling him that there had been other employees whom you had helped out financially in the past 482

(221)

at the plant? A. I don't remember ever telling him that.

Q. Well, did you ever assist other employees financially? A. Yes.

Q. Did you ever in the past finance or put any of the old employees in business? A. Never.

Q. Was it Mr. Roff that had informed you before Mr. Klein was employed by you, that he was expecting the arrival of a youngster? A. I don't remember Mr. Roff telling me that.

Q. You don't know if it was Mr. Roff that informed you 483
of that or not? A. No.

Q. Who do you think it was that informed you? A. I think after he was working for me for several weeks he suddenly told me.

Q. I see. A. That he expected—that his wife expected a baby.

Q. Did that knowledge enter into the granting of the raise to him? A. No, sir.

Q. His work merited the $2 raise? A. Yes, sir.

484 Q. So that at the time he thanked you for the raise you
(222)
knew that he was expecting a youngster? A. I don't recall if it was before or later.

Q. I see. But you did know it sometime? A. At sometime I heard about it.

Q. I see. Now will you tell us what is the salary of Mr. Louis Greenberg?

Mr. Conrad: Your Honor, I object to that as not within the issues here.

Trial Examiner Ward: What do you expect to
485 prove by that, Mr. O'Gorman?

Mr. O'Gorman: Going to show the nature of the position held by the previous witness, showing that he is one of the highest paid employees at the plant, and that he has a real monetary interest in maintaining a continuance of the past relationship with his employer.

Trial Examiner Ward: He may answer.

The Witness: Up to last year he received $75 a week.

Q. (By Mr. O'Gorman) And what is his present salary?
486 A. Eighty-five, either eighty or eighty-five. I don't recall.

Mr. Greenberg: Eighty-five.

The Witness: Eighty-five.

Q. (By Mr. O'Gorman) Is he a married man? A. Yes.

Q. Have you in the past financed a trip for Mr. and
(223)
Mrs. Greenberg? A. Never.

Q. Do you recall ever sending Mrs. Greenberg up to

the mountains when her husband was confined? A. I didn't know he was ever confined. I don't remember him ever being confined and I never—and I never advanced any moneys to him. 487

Q. What is his position with your company? A. Buying of the wool, and taking—he used to take care of our hand-made department.

Q. Does that position require him to travel? A. Perhaps one or two days a year.

Q. To what points? A. Brooklyn.

Q. I do not think you would exactly call that traveling. A. That's as far as he goes, that's as far as he has to go for us. 488

Q. Does he travel for anybody else? A. No.

Q. Is he on any other payroll other than yours? A. Not that I know of.

Q. Of your own knowledge? A. Not of my knowledge.

Q. Do you recall Mr. Klein attempting to communicate with you by telephone, by a call at your office after he left

(224)

the shipping department? A. No, sir. In answer to that also I want to tell you something. If he—

Mr. Conrad: Just answer the questions. Will you please just answer the questions? 489

Q. (By Mr. O'Gorman) Go ahead. A. If he would try to get us I would have to answer on account of I wouldn't have anybody in our place know that I wouldn't answer a phone for anyone. We run a pretty nice firm.

Q. And where all employees have great opportunities, after 15 years of service they can earn as much as $19 a week?

Mr. Conrad: I object to the form of the question.

Trial Examiner Ward: Sustained.

490 Q. (By Mr. O'Gorman) Now, did Mr. Roff talk to you about reinstating Mr. Klein? A. Yes.

Q. What did he say to you? A. He said that Klein had got in communication with him, had showed him a letter where the doctor told him he couldn't work in the shipping department, and then gave him a second letter where he could work. And to me that was very puzzling. I said I couldn't have an employee who could get a doc-

(225)

tor in one statement in one week to say that he could not work and in the second week he could work. That wasn't
491 for the Regal Knitting Company.

Q. That is your test of employment, is it? A. What?

Q. Is that your test of employment?

Mr. Conrad: I object to the question.

The Witness: That is—

Mr. Conrad: Just a minute. Please do not answer until there is a ruling on it.

Trial Examiner Ward: He may answer if he understands the question.

Q. (By Mr. O'Gorman) Is that one of the tests you apply to your employees? A. I never had another occasion like that in—since we are in business.

Q. What else did Mr. Roff say to you about Mr. Klein? A. That was the—that was the entire conversation.

Q. And you told him that? A. As far as I—

Q. Any employee that could get two letters like that, contradictory letters, shouldn't be employed by Regal Knitwear Company; is that what you told him? A. Considering his condition, what the letter stated, I didn't think

(226)

he was fit to work in the Regal Knitwear Company.

Q. And is that why you terminated his employment? 493
A. That's one of the—that's about the main reason, that he said he couldn't keep his job. He came in with those letters and said he couldn't work where he was told to work. I think he'd be working there to this very day if that incident hadn't occurred.

Q. Well, why didn't you put him back to picking orders? A. On account of these—the doctor said he was incapable. You can have the same thing if a—picking orders and what he was doing in the shipping department, there is practically no difference.

Q. Well, isn't it true that the job of order picker re- 494
quires the employee to pick up several pieces of garments or merchandise— A. As I explained—

Q. —and carry them to a box or from a box; isn't that correct? A. As I—he told you yesterday in his testimony that he brought wagonloads of merchandise from one floor to another and had to lift them up into bins which were twice his height and put them up there. And no matter how he got there he had to do it and there would be practically no difference in his work in the shipping room or in the stock room, in my estimation.

(227) 495

Q. Now, Mr. Israel, as I understand Mr. Klein's testimony he did not bring trucks from one floor to another and lift them into bins. A. Well, I'd like to look back at his testimony and see if that isn't so.

Mr. Conrad: What is the use of getting in an argument about it?

Trial Examiner Ward: Never mind.

Mr. O'Gorman: The record will show.

Q. (By Mr. O'Gorman) Is it not a fact that the duties

496 formerly performed by Mr. Klein consisted of pushing a truck along on which there were cases of merchandise and that he would lift the merchandise out of the case on the truck into the various bins or places where the merchandise was stored; isn't that right? A. Let me correct you.

Q. Is that right? A. No. There are no cases. These are all boxes. We don't use cases.

Q. With the exception of the word cases—you call them boxes? A. Correct.

Q. Are they wooden boxes? A. Paper.

Q. Paper boxes. All right, paper boxes. Then that is

497 (228)

a true description of his duties? A. Practically.

Q. Yes. Now, isn't that different from lifting the entire case or paper box? A. As we explained, as Moe Lavsky explained—

Q. Just please answer my question.

Mr. Conrad: Let him answer. He is answering it.

The Witness: I've got to answer it my way.

Trial Examiner Ward: Proceed.

Q. (By Mr. O'Gorman) Is it different or not? A. I

498 can't answer that with a yes or no.

Trial Examiner Ward: Answer it your way.

The Witness: In packing in the shipping room you take the very same boxes and put them into a carton. When that carton is full you seal it. In a place like ours there is not one person would allow the other person to overwork themself or strain themself. Should the carton happen to be a little larger than a small one that any human being could carry, there would be plenty of assistance to help

them. There would be nobody, in all the years of 499
our experience in 23 years, nobody ever strained themself in the Regal Knitwear Company from overwork.

Q. (By Mr. O'Gorman) And you believe the records of your workmen's compensation carriers would corroborate

(229)

that statement? A. Why, you might find one or two cases in the workmen's compensation that we couldn't prove how it happened. I know for one fact it never happened in the shipping room that I can prove, that the workmen's compensation can prove. 500

Q. What case was that? A. I couldn't recall, but every once in a while you might hear somebody went to the compensation for something, which I wouldn't pay any attention to because I know in our place we don't overwork ourself.

Q. But you permit the insurance company to pay on those claims? A. Well, Mr.—

Mr. Conrad: I object to that.

Trial Examiner Ward: Sustained.

Mr. Conrad: I do not see what it has to do in this case. If Mr. O'Gorman wants an adjournment 501
why doesn't he ask for one instead of this type of questions?

Trial Examiner Ward: We are getting rather far afield.

Mr. Conrad: He is way out in the woods. If you want an adjournment why don't you ask for it?

Mr. O'Gorman: We don't need any adjournment.

Mr. Conrad: Well, you are acting as if you need one.

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502 Trial Examiner Ward: Proceed.

Q. (By Mr. O'Gorman) Now, did you instruct Mr. Roff to inform Mr. Klein that he was through at the place? A. For some reason, I don't understand why, I never saw Mr. Klein after that Saturday. He never came to me.

Q. I do not recognize that. Please answer my question.

Trial Examiner Ward: Read the question.

(Question read.)

The Witness: Yes.

Q. (By Mr. O'Gorman) You did. He was through for
503 good; is that right? A. Yes.

Q. You used that language, told him he was through for good? A. Well, not exactly like that. I don't—I said—

Q. In substance is that it? A. I said, according to my opinion. I think it was more that I said that in this case as it is I don't think he is a proper person to be employed by the Regal Knitwear Company. That was the—

Q. And you instructed Mr. Roff—

Trial Examiner Ward: Let him finish.

The Witness: That was the last conversation I
504 had. All I said was I didn't think that he was the

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type person to work at the Regal Knitwear Company.

Trial Examiner Ward: And it was your understanding that he would convey that word to Klein?

The Witness: Exactly.

Trial Examiner Ward: And that Klein was through working?

The Witness: Exactly.

Mr. Conrad: At that time, your Honor—I want your Honor to understand it—Klein had already quit; he was not working there that week. He was trying to get back. 505

The Witness: He had been away for about a week—

Trial Examiner Ward: The record shows that and the Examiner so understands.

Mr. Conrad: That is right. It was not a question of discharge; it was a question of taking him back.

Mr. O'Gorman: As I recall the record, the record will show that he was instructed by Mr. Roff to take off a few days, until he took the matter up with Mr. Israel. 506

That is all, Mr. Examiner.

Mr. Conrad: Only one question.

RE-DIRECT EXAMINATION:

Q. (By Mr. Conrad) Mr. Israel, I do not think that the record is clear on this question of vacations. When these people were taking winter vacations it was not the

custom in addition to give them a summer vacation, was it? A. No, sir. Either winter or summer vacations were granted. 507

Q. Now, you have in your employ men getting over $85 a week? A. I think Mr. Roff gets over.

Q. How many men in your place get over $85 a week? A. Oh, we have about ten.

Q. Getting over $85 a week? A. Yes.

Mr. Conrad: All right, that is all.

Trial Examiner Ward: You are excused.

(Witness excused.)

508 Mr. Conrad: As far as the respondent is concerned, the respondent rests.

Trial Examiner Ward: Respondent rests.

Mr. O'Gorman: If my application for the issuance of the subpoenas has been granted, I will see that they are served immediately.

Trial Examiner Ward: Off the record.

(There was a discussion off the record.)

Trial Examiner Ward: On the record.

The counsel for the Board has asked for the issuance of two subpoenas and the Examiner has

509 granted them.

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We will take a recess at this time until—it may take a little time to get the witnesses—until 2:30.

(Whereupon at 12:45 o'clock P. M. the hearing in the above entitled matter was recessed until 2:30 o'clock P. M.).

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After Recess.

(The hearing in the above matter was resumed, pursuant to recess, at 2:30 p. m.)

510 Trial Examiner Ward: We will proceed.

Mr. O'Gorman: Mr. Piccolo.

RALPH PICCOLO was thereupon called as a witness by and on behalf of the National Labor Relations Board and, having been first duly sworn, was examined and testified in rebuttal as follows:

Direct Examination:

Q. (By Mr. O'Gorman) Will you give us your full name and address, please? A. Ralph Piccolo.

R. Piccolo, in rebuttal for Board, Direct.

Q. What is your home address? A. 1333 Fifty-fifth 511
Street, Brooklyn, New York.

Q. By whom are you employed? A. Regal Knitwear Company.

Q. How long have you been employed there, how long a period of time have you been there? A. Sixteen years.

Q. Sixteen years? A. Yes, sir.

Q. What is your position at the place? A. At the time?

Q. What is your position at the present time? A. Re-

(235)

ceiving clerk. 512

Q. Receiving clerk? A. That is right. There are not many positions.

Q. Are you acquainted with Julius Israel? A. Yes, sir.

Q. Did you have a conversation with Mr. Julius Israel about a year ago? A. Well, we always have conversations with our bosses; that is not unusual.

Q. Possibly I can confine the conversation. Did Mr. Israel ever speak to you about your membership in the union? A. Yes, he did.

Q. When did this conversation take place? A. About 513
the middle of 1942.

Q. Will you tell us what that conversation was? Repeat it for us, if you will.

Mr. Conrad: Set the time and place.

The Witness: He didn't say much there—

Mr. Conrad: There is no time, your Honor, or where the conversation took place.

The Witness: He asked me if I was in the union, and I told him I was.

514 Trial Examiner Ward: Just a minute. Fix the time and place as closely as you can. First,

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fix the place where it took place.

The Witness: It was on the third floor.

Q. (By Mr. O'Gorman) In the plant? A. In the plant, yes.

Trial Examiner Ward: What time of the year?

The Witness: Well, it was about, what month it was, I can tell you that it was either July or August, around that.

515 Q. (By Mr. O'Gorman) During the past summer? A. Yes, sir.

Q. The summer of 1942? A. That is right, yes, sir.

Q. Is that your best recollection as to the time? A. That is right.

Mr. O'Gorman: Are you satisfied with Mr. Conrad?

Mr. Conrad: Go ahead.

The Witness: It is not too important anyway.

Q. (By Mr. O'Gorman) Will you repeat that conversation to us, if you will? A. He asked me if I was in the
516 union; I told him I was. He says, "What are you going to do about it?" I says, "Nothing, I am going to stay in the union." That was all.

Q. Was any reference made by Mr. Israel to your mother? A. He said he would speak to my mother but he never went that far.

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Q. He never spoke to her? A. No, he never did.

Q. At the time of the conversation was your mother in

the employ of the Regal Knitwear Company? A. Not employed, no. 517

Q. What was her connection with the company? A. She was a contractor.

Q. She was a contractor? A. That is right.

Q. Will you tell us what a contractor is? A. A contractor takes work out. They give her work and she takes care of other people; she hands it out to other people.

Q. She hands it out to others? A. That is right.

Q. In other words, she was doing business with the Regal Knitwear Company? A. Yes, sir.

Q. Would you call her a sub-contractor? A. Sub-contractor, that is right. 518

Mr. O'Gorman: That is all.

Mr. Conrad: No cross.

Mr. O'Gorman: That is all.

Trial Examiner Ward: You are excused.

(Witness excused.)

Trial Examiner Ward: Call your next witness.

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Mr. O'Gorman: Miss Strackman.

519

JEAN STRACKMAN was thereupon called as a witness by and on behalf of the National Labor Relations Board and, having been previously duly sworn, testified further in rebuttal as follows:

Direct Examination:

Trial Examiner Ward: This witness has heretofore been sworn.

Q. (By Mr. O'Gorman) Miss Strackman, I believe you

520 were present this morning when Mr. Julius Israel testified to the effect that on the occasion when he kissed you, you were in his office for the purpose of making a telephone call to an ex-employee of the Regal Knitwear Company, is that true? A. Yes, sir.

Q. Was that the time that the kissing occurred? A. I believe it was the time.

Q. Or was it in August, 1941?

Mr. Conrad: I object to that type of question.

He is cross-examining his own witness. I think she has answered.

521 Trial Examiner Ward: The objection is overruled.

The Witness: I don't remember the month.

Q. (By Mr. O'Gorman) I believe you testified here yesterday to the effect that in the summer of 1941 Mr. Israel called you among others into his office. A. That was

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right after my vacation in August, that is right.

Q. In August? A. Yes.

Q. After your summer vacation? A. That is right.

Q. Before you went to Florida that year? A. I went

522 to Florida in December.

Q. This of course took place before? A. Before I went to Florida.

Q. What was the purpose of you going into his office at that time? A. Well, he asked me to come in. When I had asked him if he had fired the girl he had asked me to come into his office, so that we can talk inside. That was when he closed the door.

Q. By the way, there has been a partial description of Mr. Israel's office. Will you assist us further by telling us

whether or not the partitions in Mr. Israel's office are 523
solid? Are they solid partitions? A. Yes. There are two doors.

Q. Two doors? A. One leading through the office and one leading out this little hall.

Q. That hall, is that the place where the customers are

(240)

entertained or shown merchandise? A. That is a little room right around the bend where this other door is; there is another little room, and the door leading out is like a little hall.

Q. Where does this hall lead? A. It leads out to where 524
the time clock was and out where the elevators are.

Q. Well, is there a staircase located near the elevators? A. Yes, there is a staircase and three elevators.

Q. During the last two years that you were employed at the Regal Knitwear Company, did Mr. Israel or any supervisory employee admonish you with respect to your talking to other employees or with regard to the clothes that you were wearing at work? A. Nobody ever mentioned anything about my clothes or anything at all of any kind like that.

Q. When was the first time you heard any criticism 525
with regard to the sort of clothes you wore? A. I didn't hear anything any place at all.

Q. Did you hear it until you arrived here at the hearing room? A. That is correct.

Q. That was the first time you heard it? A. That was the first time I ever heard anything about it.

Q. Did you pose in a bathing suit for the firm? A. Not in the place, no.

526 (241)

Q. Did you pose for photographers? A. That is correct.

Q. At whose request did you pose? A. Mr. Israel, Senior.

Q. Mr. Israel, Senior. Can you tell us when this took place?

Trial Examiner Ward: Will the reporter read the last answer, please?

(The answer was read.)

The Witness: This took place a number of years
527 back.

Q. (By Mr. O'Gorman) Can you tell us when you posed with the caps, was it the same time? A. I remember it was during the winter.

Q. At the same time that you posed in a bathing suit? A. That is right, it was during the winter.

Trial Examiner Ward: That was two years or more back?

The Witness: More than that.

Trial Examiner Ward: More than that?

The Witness: Yes.

528 Trial Examiner Ward: Proceed.

Q. (By Mr. O'Gorman) Mr. Israel testified here this morning that on the occasion of the occurrence in his private office when he saw fit to kiss you in order to calm you, were you calmed as a result of that? A. That was right after he tried to choke me; I started crying, and then he felt sorry and put his arms around me and he said, "I am

(242)

very sorry." And he kissed me on the cheek. That had nothing to do with the telephone.

Q. Did he calm you at all? A. No, because when I walked out I was hysterical; I cried for about three hours. 529

Q. Where did you cry? A. I went into the ladies' room and all the girls came in.

Q. Did you tell them what had taken place? A. While I was crying Sylvia Abrams, one of the girls I used to work with, she came in and told me that Julius had just told her he wanted to choke me; he was very angry with me. She said all the girls in the office heard him say that.

Q. Did any man go into the ladies' room? A. Mr. Bearnot.

Q. Who is Mr. Bearnot? A. He is a brother-in-law of Mr. Israel. 530

Q. What did he say to you? A. He came in and asked me if I was ill; I told him that his brother-in-law tried to choke me. He said, "Do you want to go home?" I said, "No, I will stay."

Q. What was his position with the company? A. I believe he is treasurer.

Q. Mr. Bearnot was treasurer of the Regal Knitwear Company? A. That is right.

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Q. Mr. Israel this morning testified to the effect that it was a telephone conversation you had with an ex-employee or an employee that caused you to break down and cry? Will you tell us what did cause you to break down and cry? A. After I had spoken to the girl, I wouldn't cry after talking to the girl; there was nothing to cry about. She just told me she was working there. He said, "Didn't you just hear what she said?" I said, "What she told me the day before is altogether different." He then jumped up and grabbed my neck and started to choke me. 531

532 Q. Was it the choking that caused you to break down and cry? A. Yes, I got scared at the moment.

Q. What is that pin you are wearing? A. This is an "E" pin, for efficiency awarded to us by the Army and Navy—

Mr. Conrad: I object to that. I don't know where that is in issue in this case.

The Witness: For good work.

Trial Examiner Ward: Just a moment.

Mr. Conrad: I move to have that stricken.

Trial Examiner Ward: It may be stricken.

533 Q. (By Mr. O'Gorman) Now did you speak to the girl whom Mr. Israel had called from his private office? A.

That is right.

Q. After that day? A. Yes, I did.

Q. How soon after? A. I believe it was two days after I had met her and she told me she was fired. I asked her how come you told me you had a nice job over the phone. She said "He got me all excited; I didn't know what I was saying," and she said he is connected with some relation of her, he is very friendly with somebody she knows, and

534 she didn't know what to say, and she said she was afraid, but she got that job for a few days and she was fired, so she couldn't press any charges.

Trial Examiner Ward: Off the record.

(There was a discussion off the record.)

Trial Examiner Ward: On the record.

Q. (By Mr. O'Gorman) Did she tell you who obtained the job for her? A. Yes, she said Mr. Israel got her that job, but she had it only for a few days because she was fired.

Q. Had that girl belonged to the union while at the 535
Regal Knitwear Company? A. Yes, sir, she was pretty active in the union.

Q. On the day you had your last conversation with Mr.

(245)

Israel did he tell you that he would have no trouble in obtaining new employees? A. That is right, he told me—

Mr. Conrad: I object to that as not proper rebuttal evidence. There was nothing brought out by either side on this.

Trial Examiner Ward: She may answer.

The Witness: He told me he wasn't afraid to fire 536
people because he is connected with the Kahn Agency and he could get all the help he wanted from the Kahn Agency, friends of his.

Q. (By Mr. O'Gorman) Did he mention to you that he was acquainted with a man that had influence in unions? A. Yes, he said he had a friend, Mr. Joseph Love, I believe, and that Mr. Love told him not to worry about any unions because he would help him out; he knew a lot of people.

Q. Will you tell us the best you can the type of clothes that you usually wore when you went to work at the Regal 537
Knitwear Company in the last two years? A. Well, mostly little suits, and if I had a date in the evening I would dress a little nicer; I would wear a dress instead of a suit.

Q. Did you wear any protective smock? A. Yes, I did.

Q. While you were working? A. I always wear a smock when I work.

Q. Did you do that continuously during the period of

(246)

two years you were employed? A. Yes, sir.

538 Q. Did that smock entirely cover your dress? A. That is correct.

Mr. O'Gorman: That is all.

Mr. Conrad: No questions.

Trial Examiner Ward: You are excused.

(Witness excused.)

Trial Examiner Ward: Call your next witness.

Mr. O'Gorman: Arthur Klein.

ARTHUR KLEIN was thereupon called as a witness by
539 and on behalf of the National Labor Relations Board and, having been previously duly sworn, testified in rebuttal as follows:

Direct Examination:

Trial Examiner Ward: This witness has heretofore been sworn.

Mr. O'Gorman: Mr. Examiner, this might be repetitious but I ask you to bear with me because my recollection of the record is not sure on this point.

Q. (By Mr. O'Gorman) Mr. Klein, Mr. Israel has testi-
540 fied to the meeting that took place between you and he in the sales room of the plant after you had been transferred to the shipping room. I believe it was a Saturday morning.

A. It was Monday morning.

Q. Mr. Israel's recollection is that you were transferred on Friday and this conversation took place on Saturday morning. What is your best recollection of that? A. I was transferred on Friday around the time that he stated it was somewhere from two to three and I had continued to work for the afternoon, and also Saturday, and Monday

morning before I started I went into the show room, and 541
that part of the testimony I repeated.

Q. I just wish to ask you again, did you on that occasion refer to the fact that Mr. Israel knew that you were suffering from a hernia? A. Yes, sir.

Q. I ask you once again, you are sure that Mr. Israel on the occasion that you applied for employment at the Regal Knitwear Company, informed you that the nature of your work that you would be expected to perform would be of a light character? A. That is right.

Q. You are positive on that occasion you had told him you had suffered from hernia? A. That is right. 542

Q. This morning we had the testimony of Mr. Julius Israel as well as the testimony of Mr. Moe Lawsky. Mr. Moe Lawsky testified to the effect that he had you brought

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into the shipping room by telling Tom McCusker to send you in. Mr. Israel testified that he was the one who told you when he needed you in the shipping room to return there and work. Now is Mr. Lawsky's testimony true in that respect or is Mr. Israel's testimony the true version of what happened? A. Mr. Israel's.

Q. Mr. Israel's is true? A. That is right. 543

Q. So that Mr. Moe Lawsky when he testified he was the one who brought you in there, was in error? A. That is correct.

Q. Mr. Moe Lawsky also testified to the effect that at least two or three times a day he always instructed everybody in the shipping room not to lift heavy packages, or cartons or boxes, to always ask for help, and that he gave those instructions out at least two or three times a day. Did he ever issue such instructions to you? A. No.

544 Q. Mr. Moe Lawsky also testified to the effect that only about two or three packages or boxes or bundles made up in the shipping room were ever wrapped with cord or twine. A. Well, they might vary. On the day I had to do it, I know I was told to wrap one of those extremely heavy ones. I can't say just how many a day, but on the day I

was there I was told to wrap an extremely heavy one.

Q. By whom? A. By Moe Lawsky.

Q. Was that one of the heaviest packages that you handled? A. Yes, that required a cord around it.

545 Q. On that occasion did Moe Lawsky tell you to get help? A. No.

Q. While you were working there do you know of any other employees who were picking orders or working in the stock department, that had been instructed to go to the shipping department to work?

Mr. O'Gorman: That is all.

Mr. Conrad: No cross.

Trial Examiner Ward: You are excused.

(Witness excused.)

Trial Examiner Ward: Call your next witness.

546 Mr. O'Gorman: Mr. Blaum.

EMANUEL BLAUM was thereupon called as a witness by and on behalf of the National Labor Relations Board and, having been first duly sworn, was examined and testified in rebuttal as follows:

Direct Examination:

Q. (By Mr. O'Gorman) Give your full name and address. A. Emanuel Blaum, 869 Hopkinson Avenue, Brooklyn.

Q. Are you employed by the Regal Knitwear Company? 547

(250)

A. Yes, sir.

Q. How long have you been so employed? A. In April it will be thirteen years.

Q. Are you acquainted with the practice of handing out theatre tickets at the plant? A. Yes.

Q. Did you ever receive any tickets? A. I received them several times.

Q. Can you tell us when this practice started? A. That practice started about, I should judge a year ago.

Q. Can you tell us when the union became active in its 548 attempt to organize the workers of the plant? A. I don't remember the exact date.

Q. Was it about the same time that the union started its attempts, that the tickets started? A. Yes, sir.

Mr. O'Gorman: That is all.

Mr. Conrad: No questions.

Trial Examiner Ward: You are excused.

(Witness excused.)

Mr. O'Gorman: Mr. Bogad.

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549 HERMAN BOGAD was thereupon called as a witness by and on behalf of the National Labor Relations Board and, having been first duly sworn, was examined and testified in rebuttal as follows:

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Direct Examination:

Q. (By Mr. O'Gorman) Will you state your full name and address? A. Herman Bogad, 201 East 93rd Street, Brooklyn, New York.

H. Bogad, in rebuttal for Board, Direct.

550 Q. How long have you been employed by the Regal Knitwear Company? A. 16 years.

Q. What is your present position there? A. Order picker.

Q. Order picker? A. Yes, sir.

Q. You were in charge of Mr. Klein? A. At one time, yes, sir.

Q. Were you consulted when he was transferred to the shipping department? A. No, sir.

Q. Can you tell us when the practice started of passing out theatre tickets at the plant? A. Well, it was about a
551 year or a little over a year ago.

Q. Will you tell us when the union started to organize the workers at that plant? A. Almost two years ago.

Q. Almost two years ago, and after the union started, the practice started of handing out theatre tickets? A. That was before they handed out tickets.

(252)

Q. When did the union usually have its meetings, do you know, hold its meetings? A. Well, I only know one.

Q. Do you know the day? A. Not the date, no, sir.

Q. Not the date, the day of the week. A. Yes, it was a
552 Tuesday.

Q. Tuesday night? A. That was the time when I used to go down there, was Tuesday.

Q. Was that an organizational meeting on Tuesday night? A. No, it was a regular meeting.

Q. Were you a member of the organizational committee? A. No, I wasn't a member of the organizational committee.

Q. Did you ever attend a union meeting on Saturday afternoon? A. No, sir.

H. Bogad, in rebuttal for Board, Direct.

Q. Did you receive any of the tickets? A. I sure did.
Q. Did you attend matinees? A. No, not matinees, it was just for the evening.
Q. You say you have been with the company for sixteen years? A. Yes, sir.
Q. Up until the time the union started organizing the workers at the plant, had Mr. Israel in the past, prior to that time ever exhibited the generosity he did afterwards?

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Mr. Conrad: I object to that your Honor.
Trial Examiner Ward: Read me that question.
Mr. Conrad: It is far afield.
Trial Examiner Ward: Read me the question.
(Question was read.)
Trial Examiner Ward: Sustained as to form.

Q. (By Mr. O'Gorman) Before the union attempted to organize the workers at the plant, had Mr. Israel ever granted extra vacations to Florida or to any other place with pay? A. No, he had never granted any extra vacations.
Q. Had he given out any tickets to employees? A. For what?
Q. For anything, for theatres? A. Yes, sir, for theatres he gave them.
Q. I am talking about before the union started to organize. A. Before the union started?
Q. Yes. A. No, sir, I am sorry.
Q. Am I correct in stating then that the only time Mr. Israel made presents to employees of theatre tickets or extra paid vacations was after the union started organizing? A. That is right.
Q. Since the time the union started organizing have you received any bonuses? A. Before the union?

H. Bogad, in rebuttal for Board, Direct.

(254)

556 Q. After the union started organizing have you received any bonuses in the last year or two? A. Yes, a bond for Christmas.

Q. Before the union started organizing did you ever receive any bonds? A. Yes, sir.

Q. Before? A. Yes.

Q. What kind of bonds were they? A. Government bonds.

Q. How many years ago would you say you received them? A. I have three bonds at home.

557 Q. You have three bonds? A. Yes. Two bonds, two fifty-dollar bonds.

Q. If my memory serves me correctly, only the last two years we have had war bonds? A. Two bonds.

Q. That would be this past Christmas? A. And Christmas before this year.

Q. In other words, just a period of approximately fourteen months, from December 1941, to December 1942? A. Yes, sir.

Q. Up until February? A. Yes, sir.

Q. So that you have received two fifty-dollar bonds?

(255)

558 A. Yes, sir.

Q. Within the last fourteen months? A. The last two years.

Q. After the union started organizing; is that right? A. Yes. Well, he used to give me money before the union ever went in, or ever was thought about, he used to give me money for Christmas.

Q. How much did you get? A. He used to give me dollars or twenty dollars. When I first started there I got one hundred dollars.

H. Bogad, in rebuttal for Board, Cross.

Q. Did you receive any raises in the last two years? A. 559
Yes, sir.

Q. Can you tell us the amount of those raises? I am not asking you to divulge your earnings? A. I got two five-dollar raises.

Q. When did you receive those raises? A. In May 1942.

Q. Yes? A. I was granted a raise by the Government right now.

Q. By the Government? A. Yes, sir.

Q. When you say the Government granted you a raise what do you mean? A. We had to get permission from 560
the Government.

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Q. From the War Labor Board? A. Yes, sir.

Q. When was the last previous raise, that is, prior to the one you received in May 1942? A. I didn't get any, sir.

Q. For how many years? A. For about a period of two years.

Q. A period of two years? A. Yes, sir.

Q. Prior to May 1942? A. Yes, sir.

Q. You did not receive any raises? A. That is right. 561

Mr. O'Gorman: That is all.

CROSS EXAMINATION:

Q. (By Mr. Conrad) Mr. Bogad, how many times did you receive tickets from Mr. Israel, theatre tickets? A. I think about three times possibly.

Q. They were always in the evening, is that right? A. I could not go before evening.

Q. I mean he never gave you any for Saturday matinees, anything like that? A. Not that.

Mr. Conrad: That is all.

H. Boqad, in rebuttal for Board, Re-direct. Motion.

562 RE-DIRECT EXAMINATION:

Q. (By Mr. O'Gorman) But you knew others that did

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receive tickets for Saturday matinee? A. No, I don't know about anybody getting them for Saturday. If they did they never told me.

Mr. O'Gorman: That is all.

Trial Examiner Ward: You are excused.

(Witness excused.)

Mr. O'Gorman: The Board rests.

563 Trial Examiner Ward: The parties having rested, the Examiner, pursuant to his opening statement, will now hear oral argument on the record and the Board may proceed.

Mr. O'Gorman: May we go off the record for a moment, Mr. Examiner.

Trial Examiner Ward: Off the record.

(There was a discussion off the record.)

Trial Examiner Ward: On the record.

Mr. O'Gorman: Mr. Examiner, at this time I wish to move that the pleadings be amended to conform

564 to the proof. This motion is made merely for the purpose of correcting errors in the spelling of names that might have arisen or minor variations in dates, and is not for the purpose of materially altering the charge in the pleadings.

Trial Examiner Ward: The usual motion; it will be granted.

We will take a three-minute recess before we start the argument.

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(Recess taken.) 565

Trial Examiner Ward: We will proceed.

Mr. O'Gorman: Mr. Examiner, the complaint in this case alleges violation of Section 8, sub-section 1, as well as two violations of sub-section 3 of Section 8. I think that we have shown independent violations of sub-section 1, through the anti-union statements made by Julius Israel to Jean Strackman as well as to Arthur Klein. I think if you will recall the testimony of Mr. Stein, the union representative, his testimony in the main was corroborated by Mr. Israel; 566
Mr. Israel did have an anti-union mind all during the periods covered by this complaint.

I think you will find that the testimony given by Jean Strackman, as well as that of Arthur Klein is corroborated and was corroborated, not alone in part by Jules Israel, but I think what stands out more in respect to the testimony of Jean Strackman than anything else are the following facts:

Jean Strackman testified on direct examination that she was called into his office on the occasion of her discharge and that Julius Israel opened up the 567
conversation by stating that he was going on his vacation and he could not leave her there to continue her activity among other employees. He had on that occasion become incensed when the term "union" was used.

Mr. Israel has corroborated the fact that he did

(259)

immediately after talking to Miss Strackman leave for Florida. That fact is uncontradicted. And it

568 certainly corroborates Jean Strackman and shows that her story was not made out of whole cloth or the result of her imagination.

On another occasion when Mr. Israel interrogated Miss Strackman he asked her to swear on the grave of his father that she would discontinue her union activities, and we find from the testimony of Mr. Israel that his father had died just prior to the occasion of that conversation, and I submit that those irrefutable facts certainly corroborates Miss Strackman with respect to her direct examination.

569 I think you will find that in the over-all picture from the employees that we submitted by way of rebuttal, three of them who are present at the present time, that the employer after the union attempted to organize the employees became unduly generous. For the first time they received theatre tickets; again for the first time they received extra vacations, paid vacations to Florida and to the mountains in mid-winter, although most of them had in fact enjoyed vacations in the summer of 1941.

Mr. Israel of course attempted to explain away
570 the winter vacation by stating that he had read an article in which it was reported that the Heintz Company found that it was to the benefit of the employees by increasing their physical well being.

(260)

And, secondly, that the employer because of increased efficiency as a result of increasing the employees' well being, received greater benefits by granting winter vacations.

I think you will find that Arthur Klein's testi- 571
mony is credible. We find it uncontradicted with respect to the statement made by him on the occasion of his second employment at the Regal Knitwear Company; Mr. Klein stated that he had suffered from a hernia and could only perform light work. Mr. Klein, we have the testimony after he was transferred to the shipping department, again reminded Mr. Israel that he had suffered from hernia and that he was being discriminated against. Both Mr. Klein and Mr. Israel stated that there was another person present. The name was mentioned; if 572
my memory serves me right, by Mr. Klein; Mr. Israel had opportunity of bringing here that witness if he wished to prove that the statements made by Mr. Klein on that occasion, and not denied by Mr. Israel, were not true. He has failed to bring in that witness.

All through this case we find gratuities being extended to the employees by the employers; we find the interrogation, and we even had an employee who is presently employed at the Regal Knitwear Company who testified in rebuttal that Mr. Jules Israel 573
questioned him about his union activities or membership rather, and asked him if he intended to continue, insidiously referring to the witness' mother.

(261)

I believe you can call upon your own experience in life and find that Mr. Israel on that occasion was threatening the witness' mother with the loss of the business that she was enjoying unless the witness withdraw from the union.

574 I might point out that that witness was brought here under subpoena. All of the witnesses who are still working at the plant have stated that gratuities were made by the employer after the union started to organize the employees.

Let's go back to the employer's reasons for the discharge of both of these parties, Jean Strackman and Arthur Klein.

Jean Strackman had worked at the plant for a period of fifteen years. Up until, according to Mr. Israel, two years ago, she had been a good employee; he had received no complaint, but about two years 575 ago—I might point out to you at this time that about two years ago was the time when the union started organizing—one of his foremen complained about Miss Strackman talking to other employees.

I think if you will read the transcript you will find that I took particular pains to ascertain from Mr. Israel whether or not he had received any other complaints from the informant other than that Jean Strackman was talking to the employees, and his answer failed to disclose that any other complaints had 576 been made.

Mr. Israel did state that in the last two years she changed the type of clothing she was wearing; he

complained that the clothes she wore disturbed the masculine members of the force and thereby caused a decrease in efficiency of those workmen.

I tried to elicit from the witness his experience upon which he based that observation, but your Honor well knows I was not permitted to go into that to

any great length, but nevertheless nowhere in the 577
testimony do we find that any foremen during the last two years complained about the efficiency of Miss Strackman. There were no complaints about the quality of her work, although Mr. Israel was repeatedly asked that question. The sole complaints were to the effect that she was talking to other employees.

I submit, Mr. Examiner, that any employer who would tolerate a series of violations of its rules for a period of two years before taking any action certainly should be examined at greater length when the 578
employer calls in that employee and states "You have been here a long time; you might do better if you went elsewhere." The general gist of that conversation was corroborated by Mr. Israel, although you will recall that whenever he was asked if he had interrogated any employees with respect to their union activities he was very alert to disclaim any proposition of that character, although he did admit he did not believe he should deal with the union during wartime.

Let's take the case of Arthur Klein. I believe Ar- 579
thur Klein was telling the truth when he testified to the effect that he had notified Mr. Israel of his inability to perform heavy work.

(263)

He was rewarded for the work that he did by receiving a raise, and then after he had joined the union, as I recall Mr. Klein's testimony, after he had induced other employees to join the union and had attended union meetings and after Mr. Israel had

580 held out tentative suggestions of foreman assistant and even going so far as to paint a rosy dream of Klein operating his own store with the assistance of Mr. Israel, and after he had received a telephone call which certainly was very mysterious, and that telephone call in the usual course of events would not have impressed me very much if it were not for the fact that on cross-examination of Mr. Roff and on his direct examination, his counsel did not see fit to go into that question. You will recall the testimony of Mr. Klein when he stated that he had told nobody
581 about the telephone call, that he had merely asked the switchboard operator to make two telephone calls, one to the hospital and the other to his wife's doctor, and lo and behold Mr. Roff, the credit manager of some years standing, went up to him without having any conversation with Mr. Klein before that and told him that he had better go home.

I submit that Mr. Roff, in order to be able to go up and make that statement to Mr. Klein had knowledge of that telephone call and under the circumstances I believe that Mr. Roff either personally
582 made that fictitious call to the branch or to the floor of the plant where Klein was working, or he was pres-

(264)

ent when Mr. Israel made the call; otherwise we find no other explanation under the circumstances of Mr. Roff's knowledge and conduct in urging Klein to leave immediately.

We do find from an examination of Mr. Klein's testimony that that was one of the few Saturday

mornings that he had not been offered a theatre ticket. 583

You heard Mr. Klein's testimony with respect to his attendance at the union meeting that afternoon and his interrogation of other fellow employees on the next work day of the reason why they had not attended the meeting. I believe the testimony should be credited in view of the fact that throughout this entire case we find a history of low-paid employees, who received one raise back in 1932 or 1933 when the NRA was in existence, and taking the usual experience of so-called production workers 584
corroborated by the testimony of Mr. Israel, that after fifteen years, employees in that place of business were able to rise from ten dollars a week to nineteen dollars a week. Mr. Israel testified that people received the average wage for the work they would perform.

You heard the testimony of Miss Strackman with respect to the telephone call made by Mr. Israel in the presence of Miss Strackman to an ex-employee; you heard the explanation given by Miss Strackman and Mr. Israel. Mr. Israel would have you believe 585
that after hearing a girl over the telephone say, "Yes, I am working here; yes, I am working here."

(265)

she immediately broke down and wept and became very much agitated and that Mr. Israel who previously had never expressed any degree of generosity throughout the years, thought that he would be able to placate her and that his kiss carried with it the magic to soothe Miss Strackman on that oc-

586 casion, and he so testified, that for that purpose he kissed her.

I believe that you will find and you must find that there was something more than a mere, "Yes," over the telephone from a familiar acquaintance that caused Miss Strackman to reach the state she was in as described by both her and Mr. Israel; I think you will find Miss Strackman's explanation of the reason for her nervous state is more plausible, that is, that Mr. Israel was attempting to choke her.

You have observed Mr. Israel on the stand, and
587 you saw the beautiful performance we had here this morning that was put on by an old time employee who is now receiving about $75 a week. You saw his demeanor while on the stand and you see the extent of the loyalty requirements of Julius Israel by requiring that employee to come here and commit perjury under oath, possibly with the fear and threat held over his head of losing his employment.

I submit that Mr. Israel has corroborated the

(266)

588 testimony of Miss Strackman when she said Mr. Israel had connections with an employment agency, that is, Mr. Benedict of the Kohn Employment Agency, and he admits friendship with Mr. Benedict over a great number of years; I believe he stated he belonged to the same club, and Mr. Israel sent Walter Matzney's father to the Kohn Agency, and he so admitted writing letters of introduction for him, and he also sent this girl to get temporary employment elsewhere so that the termination of her employment

at the Regal Knitwear Company could not be construed as an 8(3) discharge. 589

Mr. Conrad and Mr. Israel, if they wished to have Mr. Israel's story corroborated with respect to that girl's employment elsewhere, could have over night brought that girl in here to corroborate Mr. Israel as to what occurred, and they have failed to do so.

Now, let's take the testimony of Moe Lawsky. There was a man that was in there really doing a job for his employer, employed 20 years, and you observed his hands when I asked him to display them: there was no callus or grease marks on them. 590

You have heard Mr. Klein testify that Moe Lawsky did clerical work, was supervisor of the shipping, and yet that man told you that heavy cases and boxes were constantly lifted by him.

(267)

I submit, Mr. Examiner, that a man doing that work for 15 years, handling that type of work, would not have displayed the hands displayed by that witness this morning.

You heard Lawsky tell us that he sent for Arthur Klein; that he told McCusker, the foreman of the order pickers, to have Klein go to the shipping department. He does not recall seeing Mr. Israel in the shipping department on that day, but Mr. Israel who is here and heard the testimony yesterday —and I might say it might have indicated a lack of preparation to have that discrepancy in the stories of both of these men—he testified in corroboration of Mr. Klein, that he met Klein in the shipping room and he told Klein to stay there. 591

592 If we are going to give any credence to Moe Lawsky's testimony, we find in the past the general practice was for Moe Lawsky to ask other foremen to send somebody in to help them, and we find on that occasion that an unusual procedure was followed. We find Moe Lawsky's testimony to the effect, well, the rush wasn't any more than usual, and that before Klein worked in the shipping department he had the usual working force on the shipping department floor.

593 I submit, Mr. Examiner, if it was the usual volume of business and that he had the usual required shipping force in that shipping department, there

(268)

is only one explanation for Julius Israel ordering Klein to remain in that shipping department, and that was this: he knew that Klein was suffering from a hernia and he had suffered from it because of the conversations he had with him when he hired him; he knew that the nature of the work was beyond Klein's ability, and bearing in mind that this conversation took place after the mysterious phone call

594 had taken place, after the conversation between Mr. Israel and Mr. Klein on the occasion of the first raise received by Mr. Klein, on which occasion Mr. Israel asked, "Is there anything I can do to make you withdraw from the union," I submit that Mr. Israel when he saw Klein in the shipping department had the brilliant thought that if, "I order him to do work beyond his physical ability he will leave," and he seized upon that opportunity to get rid of Arthur Klein.

I wish to point out that Mr. Israel although he 595
has repeatedly stated that he was free on every occasion for his employees to reach him and that he would never let any employee believe that he would refuse to talk to anybody, was unavailable when Klein attempted to reach him after he went home acting upon the advice of Roff.

Roff, by the way, let's see what credence we can give to his testimony.

Trial Examiner Ward: Your time is up.

(269)

Mr. O'Gorman: I want just a minute to close 596
this up.

We find he said he was a good friend of Arthur Klein; yet when he led Klein to believe that he would intercede on his behalf with Mr. Israel, we find that when he talked to Mr. Israel he did not speak in Klein's behalf at all. You heard him state that he only met him twice, and then we were able to drag it out of him, the fact that he had met Klein on the sidewalk outside of the plant and walked to the corner, at which time he told him he was through.

Let's go back to Mr. Israel's testimony with re- 597
spect to what he told Roff to communicate to Mr. Klein. I think you will find in the testimony that Mr. Israel told Roff to inform Klein that he was through for good.

Now, nowhere do we find any explanation of why Klein was discharged, and according to Roff it was because of his physical condition; according to Mr. Israel it was because he was able to procure two apparently contradictory letters from a doctor.

598 I think if you will examine both of the letters you will find the first says this:

"I advise that he refrain from work which entails lifting of weights in order to prevent a recurrence of the hernia."

The second says this:

(270)

"I have re-examined Arthur Klein. He no longer complains of any pain in the groin. I find his condition very satisfactory and he may return to any type of work."

599 I submit, Mr. Examiner, that there is nothing contradictory there. There was a passage of time and there was an improvement in his physical well being noted by the physician.

I point that out to you to show the extremes that Mr. Israel went to in order to find a possible excuse for the discharge of Arthur Klein.

You heard Mr. Israel admit that he knew that Arthur Klein was expecting the arrival of a youngster and he knew at the time he was letting him out that Arthur Klein was much worried about how he would

600 finance his wife's oncoming confinement.

I submit his conduct under those circumstances together with his violence and his apparent desire to win favor of his employees through—I won't call it generosity, but his intention to win the favor of his employees by giving them tickets and other gratuities, expressed his anti-union state of mind.

I submit that both Arthur Klein and Jean Strackman were, in the first place, discharged for union activities, and that Arthur Klein when he was trans-

(271)

601 ferred to the shipping department was discriminated against because of his union activities and that the later refusal to re-employ him was the expression of a desire on the part of Julius Israel to interfere with the union activities of his employees and to discourage membership in the union.

Mr. Conrad: Mr. Examiner, when I first was hearing the story in this case I frankly was under the impression that this union had really made its case out of whole cloth but I do not believe that the record here can carry that out. I think Mr. O'Gor- 602 man is attempting to assist them in creating here an impression and trying to impress you with the facts that absolutely have no bearing. They bring up fictitious telephone calls that I did not even ask about; I paid it absolutely no attention because it is a ridiculous statement, but Mr. O'Gorman could have asked him about it, he was here; we produced Mr. Roff.

So far as this whole case is concerned, my impression all the way through in this case has been one of kindness, one of a good employer. 603

Mr. O'Gorman says we did not prepare the case. I admit that we did not and we just asked questions as they come, to try to show a straightforward story. He prepared his case thoroughly, and when he put certain questions he knew what the answers were go-

(272)

ing to be. He put leading questions and led along, but I did not object to a lot of objectionable features because I really wanted to get the story out.

604 Jean Strackman, frankly I believe first tried to tell the truth, but she was coached in between the time Mr. O'Gorman called her previously and the rebuttal, because she said things that were not true on this rebuttal. I did not want to cross examine her; she did not testify about any new questions or make any new evidence which was proper rebuttal testimony. He was bringing it out because he was trying to make the case stronger.

Then he put on three or four men working there now, who are still members of the union and who
605 are still employed at the Regal Company. Now why didn't he ask Mr. Israel regarding Mr. Israel's discussion with any employee in 15 years, telling them to perjure themselves the way Jean Strackman and Arthur Klein have been coached. I don't believe Mr. O'Gorman believes that himself.

This union, I happen to know, is one of the most militant unions in the East. I have nothing against them. I did not cross examine Mr. Stein because he made a statement innocuous to the facts in the case, and I just passed it; I did not want to cross
606 examine him.

I say there was nothing wrong in the discharges in this case, but Klein was not even discharged. He

(273)

got this letter and he brought in this letter, I think of May 25, which Mr. O'Gorman carefully left out part of; the part that he left out states: "Arthur Klein complains of pain in the right groin. He has had a hernia of the right side which was repaired several years ago."

Is it credible that this man working there in a position of this soft said to Mr. Israel, "I will take your position only on condition that you don't require me to lift any packages because I had a hernia several years ago." 607

To show you how ridiculous that statement is, Mr. O'Gorman tried to read this, that in the several years he had this hernia, but between May 25, 1942, and June 1, 1942, he was cured, and on June 1, 1942, he could return to any type of work.

I don't think we should waste any time on Klein's case. That man perjured himself, in the first place, on the question of his employment, and certainly, your Honor, that man does not even claim discharge, he quit, and Mr. Israel did not want to take him back. That was his reason. 608

As far as Jean Strackman's case is concerned, as I said, I think this girl was trying to tell the truth. The only question about it is that the testimony that she gave in rebuttal was manufactured between

the time that we met here this morning and this afternoon, because nothing was said about that type of testimony when she testified yesterday. Mr. O'Gorman had the full facts, had full papers on it, and he didn't bring up all of these issues, because maybe Miss Strackman does look too good to work in a place of that sort. It is a factory. Maybe she might have distracted other people, employees, from their work. Maybe it was a justifiable discharge. 609

Now, I would bring this to your attention again. Mr. O'Gorman said I did not prepare my case; I

610 did not think it was the kind of case to prepare; it is just a question of fact. In so far as the facts are concerned I don't think there is any need for me to go over them; you have heard them and I think you will have the complete testimony and the only thing is to look at the facts, instead of what Mr. O'Gorman has tried to dress up this story that was originally manufactured by the union, but later dressed up by Mr. O'Gorman.

Mr. O'Gorman: Mr. Examiner, when you examine Board's Exhibit 3 and Respondent's Exhibit 1 I ask
611 you to bear in mind the testimony of Arthur Klein to the effect that after working a day in the shipping department he felt pain and he went to his doctor on that occasion to be examined, and that on the second occasion according to the testimony he went

(275)

to his doctor and he was no longer suffering any pain, but that time was after he had remained at home for several days.

I think counsel's lack of preparation for the respondent on the past history of the charging union
612 is no part of this case.

I might comment for the record that upon my return from the luncheon recess and up to the time I sat down here to reconvene this afternoon, I observed Mr. Conrad was talking to Miss Strackman, so that I doubt I would have had any opportunity to manufacture her thoughts on her afternoon testimony.

That is all.

Board's Exhibit 1.

Trial Examiner Ward: The parties having rested and the Examiner having heard oral argument on the record and there being nothing further to come before the Examiner, I now declare this hearing closed. 613

(Whereupon, at 3:15 o'clock P. M. Friday, February 5, 1943, the hearing in the above entitled matter was closed.)

Board's Exhibit 1.

UNITED STATES OF AMERICA 614

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

In the Matter of REGAL KNITWEAR CO., INC. (Name of company) and WHOLESALE & WAREHOUSE WORKERS UNION LOCAL 65, CIO. (Name of charging party)	Case No. II-C-4511 Date filed 1/18/1943

615

SEVENTH AMENDED CHARGE.

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that (Full name of company) Regal Knitwear Co., Inc. at (Address of establishment) 1333 Broadway, New York, N. Y. employing (Number) 100 workers in (Type of business) sale and distribution of knit goods has engaged in and is engaging in

Board's Exhibit 1.

616 unfair labor practices within the meaning of Section 8 subsections (1) and (3) of said Act, in that

On March 20, 1942, Regal Knitwear Co., Inc., by its officers, agents and employees, terminated the employment of Jean Strackman, and on or about May 22, 1942, assigned Arthur Klein to more arduous or less agreeable work; and on or about June 3, 1942 did discharge the said Arthur Klein, because of their activities in behalf of Wholesale & Warehouse Workers Union, Local 65, CIO and to discourage membership in said labor organization.

617 And the said Corporation, since on or about June 24, 1941, by the acts set forth in the paragraph above, and by intimidation, threats, and other acts and conduct, it, by its officers, agents and servants, interfered with, restrained and coerced its employees in the exercise of their rights as set forth in Section 7 of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

618 WHOLESALE & WAREHOUSE WORKERS UNION, LOCAL 65, CIO
U. R. W. D. S. E. A.
13 Astor Place, New York, N. Y.
By: Mac Wantman, Organizer

Subscribed and sworn to before me
this 18 day of Jan. 1943 at N. Y., N. Y.
Edith Grossberg
Designated Agent

Board's Exhibit 1.

COMPLAINT

619

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

In the Matter of REGAL KNITWEAR CO., INC. and WHOLESALE & WAREHOUSE WORKERS UNION, LOCAL 65, C.I.O.	Case No. II-C-4511

620

It having been charged by Wholesale & Warehouse Workers Union, Local 65, C.I.O., 13 Astor Place, New York, New York, that Regal Knitwear Co., Inc., 1333 Broadway, New York, New York, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the "Act," the National Labor Relations Board, hereinafter referred to as the "Board," by the Regional Director for the Second Region as agent for the Board, designated by the Board's Rules and Regulations—Series 2, as amended, Article IV, Section 1, hereby issues its complaint and alleges as follows:

621

1. Regal Knitwear Co., Inc., hereinafter referred to as "Respondent," is and has been since 1922 a corporation duly organized under and existing by virtue of the laws of the State of New York.

Board's Exhibit 1.

622 2. At all the times herein mentioned, Respondent ha maintained its principal office and place of business at 133 Broadway, in the City of New York, County of New York and State of New York, hereinafter called the "New Yor plant," and is now and has been continuously engaged a said New York plant, in the manufacture, sale and dis tribution of knit goods and reiated products.

3. Respondent, in the course and conduct of its busines operations, causes and has continuously caused a substan tial amount of materials to be purchased, delivered an transported in interstate commerce from and through th 623 states of the United States other than the State of Ne York to its New York plant, and causes and has continuou ly caused a substantial amount of the products manufactu ed, sold and distributed by it as a part of its business to b delivered and transported in interstate commerce to an through the states of the United States other than the Stat of New York from its New York plant.

4. Wholesale & Warehouse Workers Union, Local 6 C. I. O., hereinafter referred to as the "Union," is a labo organization within the meaning of Section 2, subdivisio (5) of the Act.

621 5. Respondent did, on or about March 20, 1942, dis charge Jean Stuckman; and did on or about May 22, 194 assign Arthur Klein to more arduous or less agreeabl work, and on or about June 3, 1942 did discharge the sai Arthur Klein.

6. Respondent did discharge and refuse or fail to re state, assign to more arduous or less agreeable work, th employees named above in paragraph 5, for the reason tha they joined or assisted the Union or engaged in other co

Board's Exhibit 1.

certed activities for the purposes of collective bargaining 625
or other mutual aid or protection.

7. Respondent, from on or about June 24, 1941 to date has vilified, disparaged and expressed disapproval of the Union; has interrogated its employees concerning their union affiliations; has urged, persuaded, threatened and warned its employees to refrain from assisting, becoming members of or remaining members of the Union.

8. By the acts described above in paragraph 5, for the reasons set forth above in paragraph 6, Respondent did discriminate and is discriminating in regard to the hire or 626
tenure or terms or conditions of employment of the employees named above in paragraph 5, thereby discouraging membership in the Union, and Respondent did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (3) of the Act.

9. By the acts described above in paragraphs 5 and 7, and by each of said acts, Respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act and did thereby engage in 627
and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (1) of the Act.

10. The activities of Respondent, described above in paragraphs 5 and 7, occurring in connection with the operations of Respondent, described above in paragraphs 2 and 3 have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Board's Exhibit 1.

628 11. The acts of Respondent, described above, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act.

WHEREFORE, the National Labor Relations Board on the 19th day of January, 1943 issues its complaint against Regal Knitwear Co., Inc., Respondent herein.

Issued at New York, New York January 19, 1943.

CHARLES T. DOUDS,
629 Regional Director,
National Labor Relations Board.

NOTICE OF HEARING.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD
SECOND REGION.

630

In the Matter of REGAL KNITWEAR CO., INC., and WHOLESALE & WAREHOUSE WORKERS UNION, LOCAL 65, C. I. O.	Case No. II-C-4511.

PLEASE TAKE NOTICE that on the 4th day of February, 1943 at ten o'clock in the forenoon, in Room 1029 B, at 120 Wall Street, New York, N. Y., a hearing will be

conducted before a duly designated Trial Examiner of 631
the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the Regional Director for the Second Region, with offices at 120 Wall Street, New York, N. Y., acting in this matter as agent of the National Labor Relations Board, an 632
answer to the said Complaint, within ten (10) days from the service thereof. Please submit an original and four copies of the Answer.

PLEASE TAKE NOTICE that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

IN WITNESS WHEREOF the National Labor Relations Board has caused this, its Complaint and Notice of 633
Hearing, to be signed by the Regional Director for the Second Region on this 19th day of January, 1943.

CHARLES T. DOUDS,
(Seal) Regional Director,
National Labor Relations Board.

Board's Exhibit 1.

ANSWER.

634

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SECOND REGION.

In the Matter of REGAL KNITWEAR CO., INC., and WHOLESALE & WAREHOUSE WORKERS UNION, LOCAL 65, C. I. O.	Case No. II-C-4511.

635

REGAL KNITWEAR CO., INC., hereinafter referred to as Respondent, hereby answers to the complaint issued herein, and alleges as follows:

1. Denies that it is engaged in the manufacture of knit goods or related products at 1333 Broadway, New York City.

2. Denies that it has any knowledge or information thereof sufficient to enable it to form a belief as to the truth of the allegations contained in paragraph "4" of the
636 complaint.

3. Denies each and every allegation contained in paragraphs "5", "6", "7", "8", "9", "10" and "11" of the complaint.

WHEREFORE, respondent demands that the complaint be dismissed.

CONRAD AND SMITH,
Attorneys for Respondent.
Office & P. O. Address,
280 Madison Avenue,
Borough of Manhattan,

Board's Exhibit 1.

State of New York,
City of New York } ss.:
County of New York,

6637

JULIUS ISRAEL, being duly sworn, deposes and says that he is the Secretary of Regal Knitwear Co., Inc., the respondent herein; that he has read the foregoing Answer and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters herein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

6638

Deponent further says that the reason this verification is made by deponent and not by the Regal Knitwear Co., Inc., is because the said Regal Knitwear Co., Inc., is a domestic corporation, and deponent an officer thereof, to wit its Secretary.

JULIUS ISRAEL.

Sworn to before me this
29th day of January, 1943.
(Seal) Thomas M. McCusker,
Queens Co. Clk's No. 1450, Reg. No. 2071.
N. Y. Co. Clk's No. 138, Reg. No. 4Mc67.
Commission Expires March 30, 1944.

6639

Board's Exhibit 1.

640 NOTICE DESIGNATING PLACE OF HEARING.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD
SECOND REGION.

In the Matter of REGAL KNITWEAR CO., INC., and WHOLESALE & WAREHOUSE WORK- 641 ERS UNION, LOCAL 65, C. I. O.	Case No. II-C-4511.

PLEASE TAKE NOTICE that hearing before the National Labor Relations Board, by a duly designated Trial Examiner, in the above-entitled matter, scheduled to be heard on the 4th day of February, 1943, will be held at ten-thirty o'clock in the forenoon, at Room 1801, Federal Court Building, Foley Square, New York, New York, at which time and place you will have the right to appear in person or otherwise and give testimony.

642 IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of February, 1943.

CHARLES T. DOUDS,
(Seal) Regional Director, Second Region.

Board's Exhibit 2.

UNITED STATES OF AMERICA

643

BEFORE THE NATIONAL LABOR RELATIONS BOARD
SECOND REGION.

In the Matter of REGAL KNITWEAR CO., INC. and WHOLESALE & WAREHOUSE WORKERS UNION, LOCAL 65, C. I. O.	Case No. II-C-4511.

644

STIPULATION ON COMMERCE.

For the purposes of the above-entitled proceeding only, the following facts are stipulated and agreed by and among the undersigned, and this stipulation may be received in evidence at a hearing to be conducted by and before the National Labor Relations Board with the same force and effect as if properly qualified witnesses were called before said Board and gave under oath sufficient and competent evidence as to each of the facts set forth without prejudice to the right of the National Labor Relations Board or any party hereto to offer oral testimony or other evidence as to any matter relating to the issues in this proceeding:

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1. Regal Knitwear Co., Inc., is duly organized under and existing by virtue of the laws of the State of New York since 1922. Its principal office and place of business is located at 1333 Broadway, New York City, New York.

2. Regal Knitwear Co., Inc., is engaged in the sale and distribution of knitgoods.

Board's Exhibit 2.

646 The principal raw materials purchased by the company and used in the operation of its business are yarns and cottons. During the six months period prior to February 1, 1943, the company shipped, to points located outside the State of New York, approximately $2,300,000.00 worth of finished products. The said amount represented approximately 84% of the total sales of the company during said period.

Approximately 75% of the materials received by the company at its New York plant for sale and distribution are received from points located outside the State of New
647 York.

3. Regal Knitwear Co., Inc. admits and concedes it is engaged in interstate commerce within the meaning of Section 2, sub-sections (6) and (7) of the National Labor Relations Act.

4. Regal Knitwear Co., Inc. admits and concedes for the purpose of this action that Wholesale & Warehouse Workers Union, Local 65, CIO, is a labor organization within the meaning of the National Labor Relations Act.

648 Dated, New York, N. Y., February 4, 1943.

REGAL KNITWEAR CO., INC.
By Julius Israel, Sec.

CYRIL W. O'GORMAN
Cyril W. O'Gorman, Attorney
National Labor Relations Board.

Trial Examiner Ward's Intermediate Report, Dated March 9, 1943.

649

UNITED STATES OF AMERICA.

BEFORE THE

NATIONAL LABOR RELATIONS BOARD.

TRIAL EXAMINING DIVISION.

Washington, D. C.

In the Matter of REGAL KNITWEAR CO., INC. and WHOLESALE & WAREHOUSE WORKERS UNION, LOCAL 65, C. I. O.	Case No. II-C-4511

650

Mr. Cyril W. O'Gorman, for the Board.

Conrad & Smith, by Mr. William W. Conrad, of New York, N. Y., for the respondent.

INTERMEDIATE REPORT.

STATEMENT OF THE CASE.

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Upon a seventh amended charge duly filed by the Wholesale & Warehouse Workers Union, Local 65, affiliated with the Congress of Industrial Organizations, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Second Region (New York, New York), issued its complaint dated January 19, 1943, against Regal Knitwear Co., Inc., of New York, New York, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) and

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652 (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notices of hearing, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint as amended at the hearing,[1] alleged in substance: (1) that the respondent on or about March 20, 1942, discharged Jean Strackman, and on or about May 22, 1942, assigned Arthur Klein to more arduous or less agreeable work, and discharged him on or about June 3, 1942, for the reason
653 that these employees had joined or assisted the Union, or had engaged in other concerted activities for the purposes of collective bargaining, or other mutual aid and protection; and (2) that from on or about June 24, 1941, to the date of the complaint, the respondent vilified, disparaged, and expressed disapproval of the Union; interrogated its employees concerning their union affiliations; and urged, persuaded, threatened, and warned its employees to refrain from assisting, becoming members of, or remaining members of the Union.

654 On January 29, 1943, the respondent filed its answer denying, among other things, that it had engaged in the unfair labor practices alleged.

Pursuant to notice, a hearing was held at New York, New York, on February 4 and 5, 1943, before Peter F. Ward, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, and each participated in the

[1] The complaint was amended on motion of counsel for the Board, without objection, by striking the word "manufacture" from paragraph 2, thereof.

hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. 655

After both parties had rested, the undersigned granted, without objection, the motion of counsel for the Board to conform the pleadings to the proof with respect to names, dates, and other minor variances. Oral argument, in which the Board and the respondent participated, was thereafter had on the record. While the parties were advised of their right to file briefs with the undersigned, no briefs were filed. 656

Upon the entire record thus made, and from his observation of the witnesses, the undersigned makes, in addition to the above, the following:

FINDINGS OF FACT.

I. THE BUSINESS OF THE RESPONDENT

The respondent is a New York corporation engaged in the sale and distribution of knit goods. The essential raw materials purchased and used by the respondent in the operation of its business are yarn and cottons. During the 657
six months period prior to February 1, 1943, the respondent shipped approximately $2,300,000 worth of finished products to points outside the State of New York; such shipments represented approximately 84 percent of the respondent's total sales made during this period. Approximately 75 percent of the materials received by the respondent at its New York plant for sale and distribution are received from points outside the State of New York. The respondent admits that it is engaged in interstate commerce within the meaning of the Act.

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II. The organization involved

Wholesale & Warehouse Workers Union, Local 65, affiliated with the Congress of Industrial Organizations, is a labor organization, admitting to membership certain employees of the respondent.

III. The unfair labor practices

A. *The discrimination against Jean Strackman and Arthur Klein; interference, restraint, and coercion.*

659 The record discloses that the Union began an organizational campaign at the respondent's plant about 1938, which persisted until July or August 1941, at which time the campaign became more intensified, and so continued until the present.

Jean Strackman, an employee for some 15 years, testified that she joined the Union in the latter part of July 1941,[2] on her return from a vacation. Strackman further testified that during August 1941, Julius Israel, the respondent's secretary, called Strackman into his office and asked her if she had signed a union card; she replied that
660 she had. In this connection Strackman testified:

> Q. Tell us what was said by both Mr. Israel and yourself at that time?
>
> A. I told him I had signed a union card, and he asked me why. So I said, well, people want raises, increases in their salaries and vacations, two-week vacations and sick benefit.
>
> He says, well, I could give you all that.

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[2] Strackman also testified that she signed a union card in 1938. However, she was again asked to sign a card in 1941, and did so.

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I says, well, you haven't been giving it. 661

So he says, well, I will. What do you want a union for?

And then he sat down and he says give me the names of the people that have signed up. And he says, you won't feel sorry, you'll have a job here as long as you like to work here.

So I told him I didn't do those things.

And he insisted that I give him the names, and I refused * * *

During this same meeting, according to Strackman, Israel 662
asked her to swear on the grave of his deceased father that she would not "join up" with the Union, and that she would try "to stop" some of the girl employees who had signed union cards. Strackman's testimony is credited by the undersigned.[3]

Sometime subsequent to the above conversation, Strackman, having been informed by the Union that one of the respondent's former women employees had been discharged because of union activities, talked to this woman, and was advised by her that such was the fact. Strackman then 663
went to Israel and accused him of discharging the former employee in question because of union activities. Israel denied the accusation, and stated that he knew where the woman was then employed. He had Strackman accom-

[3] Israel generally denied this and other portions of Strackman's testimony. Strackman was a credible witness. She impressed the undersigned as desirous of relating the truth, and was forthright in her manner. Israel's testimony relating to certain material matters is vague and unconvincing, and where it contradicts Strackman's, the latter's is credited by the undersigned. An example of the unconvincing nature of Israel's testimony is his statement that Strackman was an undesirable employee because she started "taking airs on" and dressed inappropriately for work which "might soil the clothes."

664 pany him into the office, telephoned the former employee, and asked her if she was in fact working, and if she was satisfied. The woman replied in the affirmative. Israel held the telephone receiver to Strackman's ear so that she could hear the responses. Israel then asked, "Didn't you just hear what she said?" to which Strackman replied, "What she told me the day before is altogether different." Israel then became very angry and seized Strackman by the throat, with the result that she became hysterical and wept. Israel thereupon sought to console Strackman, and in the
665 process kissed her. Strackman left the office and was approached by the respondent's treasurer, Bernot, while she was still crying. He asked her if she wished to go home. She, however, elected to remain at work.[4]

During December 1941, Israel directed employee Sylvia Abrams to make a list of names of employees who wished to go to Miami Beach, Florida, for a winter vacation. Strackman was approached by Abrams and informed the latter that she could not afford such a trip. Israel then conversed with Strackman and told her that he was furnishing "a car, two weeks' pay and that he would send
666 money to" a hotel in Miami Beach. He also stated that the girls could afford such a vacation because "it wasn't very expensive in December." Strackman, in company with Abrams, employees Herman Bogad and wife, and Leo Pfeffer, made the trip to Florida in an automobile supplied by the respondent. Upon their return, a group of

[4] These findings are based upon Strackman's testimony. Israel, in effect, admitted these facts, but testified that Strackman wept at the replies made by the former employee, and denied that he assaulted Strackman. His testimony, insofar as it is at variance with Strackman's, is not credited by the undersigned.

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other employees were furnished the car which took them to a vacation place in the mountains. These vacations were "paid." At Christmas time in 1941, the respondent gave Strackman a $25 government bond, whereas in previous years it usually presented her with six pairs of hose.

After the advent of the Union at the respondent's plant in 1938, Israel made it a practice to present employees with complimentary tickets for theatrical performances, and particularly for Saturday afternoon matinees given when the Union held certain of its meetings. This practice had never been indulged in prior to the coming of the Union.[5]

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Strackman attended union meetings and asked a number of employees to sign cards. Notwithstanding the winter vacation, the gifts of theatre tickets, and Israel's efforts to dissuade her from union activity, Strackman continued to attend union meetings, until March 20, 1942, when Israel asked her to meet him after working hours. Strackman did so, and testified as follows concerning the events which then transpired:

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Q. All right, tell us what happened at that time?

A. He said, I don't know what I'm going to do with you.

I says, well, I don't understand. He says, well, I expect I'll be leaving very soon on a vacation and I can't have you around, I'm afraid to trust you. I said, well, I don't understand what you mean by that.

[5] These findings are based upon the testimony of Strackman as corroborated by Arthur Klein, and also Emanuel Blaem, who is presently employed by the respondent. Israel admitted having given the respondent's employees theatre tickets, and testified that the practice started "two or more years ago."

670 He says, well, you know what's been going on al
along about a union, he says. I have a list here, h
says, of names of people that have signed up, and
expect to get rid of quite a few of these people.

And he did have a list with the names on them.

So I says to him, I don't think that is a very wis
thing to do.

And he says, oh, I don't know about that. He says
I'm giving you two weeks pay and any time you nee
any money if you don't get a job in the near futur
671 you can come up and ask me for it."

I told him I didn't accept charity.

* * * * *

Q. (By Mr. O'Gorman) Was there anything sai
in that conversation about unions?

A. So I—asked him if I was being fired for unio
activities. And he says, I'm not firing you, I'm just tel
ing you to go.

I says, well, that's being fired; if you're not firin
me I'm coming back tomorrow.

He says, o. k., then you're fired.

672 He was very angry.

So he says to me, I'm really sorry to let you go.
really need you, but I can't chance it. And—

Q. Did you ask him what he meant by chancing it

A. Yes, he said that he was afraid to have me aroun
because I would—he says, people working in a plac

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* The evidence indicates that the woman whose discharge was discussed
Strackman and Israel had been an active union member, was induced to lea
her employment with the respondent, and was placed elsewhere in emplo
ment by Israel for about one week, after which she was discharged.

673 too long get ideas, and that he realized that I had a few ideas that didn't fit in with his. So—

Q. Did he mention what those ideas were?

A. Well, he did mention union once. He said he had a list of people belonging to the union.

Q. Did you see that list?

A. I did see the list.

Q. Can you tell us any of the names that appeared on that list?

A. Well, I believe he had the name of Herman Bogad, and he did have Leo Pfeffer,[7] and he had the— 674 my name was on it, and Arthur Klein.[8] That's about all I did see.

Israel's version of this occurrence is different. His testimony is to the effect that he told Strackman he did not think "this place was suited for her any more," and he advised her "it would be better for her to get another position." Israel contended that in the last two of her fifteen years of employment by the respondent[9] Strackman "fooled around" and talked too much with the respondent's male employees, and dressed in a manner which "disrupted" their work. These contentions are uncorroborated 675 by testimony of any of the male employees in question, or any other person. Strackman received several wage increases during her employment. Moreover, consistent with Strackman's testimony, Israel admitted that he left for Florida the day after Strackman's discharge. In view of

[7] As found above Herman Bogad and Leo Pfeffer were among those given a paid vacation to Miami Beach, Florida.

[8] As hereafter found the respondent discriminated against Klein because of his union membership and activities.

[9] These years coincide with those during which the Union attempted to organize the employees of the respondent.

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676 Israel's antipathy to the Union as above related, his patently weak contentions,[10] and the fact that he left for his vacation immediately after he discharged Strackman, the undersigned is convinced and finds that Strackman's testimony relating to the conversation which took place on the day of her discharge reflects the true facts. It is apparent that Strackman was discharged because of her union membership and activities.

Prior to February 1942, Arthur Klein had been unemployed for a number of days. Early in February 1942, one
677 Miss Brown, formerly employed as a stenographer by the respondent, gave Klein a letter of introduction to Alex Roff, the respondent's office and credit manager, in which she asked Roff to "do something for" Klein. Brown also telephoned Roff in Klein's behalf and told him that Klein "was out of work * * * and he has a wife, his wife is * * * going to become a mother."

Roff introduced Klein to Israel and according to Klein's testimony which the undersigned credits, Israel at the outset of his interview with Klein stated, "before I hire you,
678 * * * suppose there was some union activity going on, would you become part of it?" Klein replied that if a majority desired a union, he "would want a union." Israel then asked Klein "* * * if the majority went off and jumped off a building, would you follow suit?" Klein responded that "there was no analogy there."[11] During this discussion Klein told Israel that he had had a hernia at one time, and would not be able to do "hard work." Israel did not disclose the type of work expected of Klein. He did, however, assure Klein that it would not be "heavy work."[12]

[10] With reference to Strackman's mode of attire, it is undisputed that while working she at all times wore a "smock" which completely covered her dress.

[11] This portion of Klein's testimony is uncontradicted.

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Israel then hired Klein at a wage of $20 per week and put 679
him to work as a stock clerk.

About March 1, 1942, Klein joined the Union and became active in its organizational efforts. He worked as a stock clerk for a time, was then "promoted" to the job of order picker, and on or about April 1 he received an increase in pay of $2 per week. Subsequently Klein met Israel in the plant and thanked him for the raise in pay. Israel then took Klein aside and told him in substance, that he had lost faith in "somebody" with respect to "being in the union." Klein responded that if the implication was 680
that he was "in the union," this was the fact. Israel then called Klein's attention to the fact that the latter was a married man who had "coming responsibilities," was "going to become a father," and would need a friend and some financial aid. Israel also stated that he was "the one" to give financial aid to Klein. He added, "I've always been good to those who have been true and faithful to me. Those who have stuck with me need never worry." Israel also suggested that he might set Klein up in business, supply him with merchandise, and give him any needed financial assistance. Israel asked Klein if there was any- 681
thing he could do or say that would "discourage" Klein from union membership, and Klein replied in the negative.[13]

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[13] Israel denied that at this time Klein informed him that he had had a hernia. Klein was straightforward in his demeanor, and consistent in his testimony. As above indicated the undersigned accords little weight to Israel's uncorroborated testimony.

[14] The above findings are all based upon Klein's testimony. Israel testified in substance that he merely told Klein that he was glad that Klein received the raise, and that he stated "I hope you'll be deserving of it and continue your good work." Israel did not categorically deny Klein's testimony concerning the former's attempt on this occasion to induce Klein to abandon the Union.

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682 On May 22, 1942, Klein had occasion to go to the shipping room where, as the evidence shows, the work performed was more arduous than the work done by stock clerks or order pickers. When he arrived there Israel, who was present, ordered him to remain and help in the shipping room. Klein worked in the shipping room the balance of that day. On the next day Klein reported to the order picking department, where he was then working, and was told by the foreman of that department that pursuant to Israel's orders he was to work in the shipping room. Klein worked in the shipping room that day. The following Monday, May 25, Klein went to the sales room where in the presence of Bob Goldberg,[14] an employee, and others, he reminded Israel of the fact that he had had a hernia, would be unable to work in the shipping department, and that if Israel persisted in making him work in the shipping department Klein would deem it a discriminatory action on Israel's part and report it to the National Labor Relations Board. Israel replied that Klein could do as he pleased, but as far as his work was concerned he was to do what he was "instructed to do." Since Klein had advised Israel at the time of his employment that, due to a hernia operation had in the past, he would be unable to perform "heavy work," the undersigned is convinced, under the circumstances herein set forth, that Klein was on May 22 transferred to the shipping room and thereafter ordered to remain there because of his union membership and activities.

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[14] Goldberg, although not shown to be unavailable, was not called as a witness.

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Klein then went to a doctor, complained that he had strained himself in the shipping room, and procured a certificate from him.[15] He later went to the plant, talked with Office Manager Roff, and gave the doctor's certificate to him. Roff said that Klein looked "bad" and advised him to go home and rest for a few days. Klein kept in touch with Roff on the telephone, and on or about May 28 returned to the plant and talked with Roff, for he had been unable to contact Israel since the meeting in the show room above referred to. Klein told Roff that he was ready to go to work. Roff stated that the respondent had received ad- 686
vices from its insurance agents that Klein could not be employed in the respondent's shipping department. Klein reminded Roff that he was an order picker, but that he would secure from his physician a certificate stating that he was capable of performing "any type of work." Klein was re-examined on June 1, and received such a certificate from his doctor.[16] On about this date he presented this certificate to Roff and stated that he was willing to do any type of work. Klein asked Roff "to take it up" with Israel, and Roff agreed to do so and let Klein know what transpir-

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[15] "To Whom it May Concern: May 25, 1942

Arthur Klein complains of pain in the right groin. He has had a hernia of the right side which was repaired several years ago. I advise that he refrain from work which entails lifting of weights in order to prevent recurrence of hernia.

/s/ LOUIS BASS, M. D.

[16] "To Whom it May Concern: June 1, 1942

I have reexamined Arthur Klein. He no longer complains of any pain in the groin. I find his condition very satisfactory and he may return to any type of work.

/s/ LOUIS BASS, M. D.

688 ed. On June 3 Klein met Roff and was advised by him that Israel told him to tell Klein he was "definitely through."[17]

Israel contended that Klein's employment was terminated because Klein produced two inconsistent statements from his physician, and was accordingly not "the type" to be employed by the respondent. He further stated that Klein was physically incapable of working, in view of his complaint. Considering the respondent's strong opposition to the Union, the physician's final opinion that Klein was able to perform all types of work, and the earlier dis-
689 crimination against Klein, the undersigned is convinced and finds that the respondent's contentions are without merit, and were advanced as pretexts for Klein's discharge, the true reasons therefor being his union membership and activities.

Ralph Piccolo, an employee of 16 years standing, and a receiving clerk for the respondent, testified that during July or August 1942, Israel spoke to him concerning his membership in the Union. In this connection Piccolo's uncontradicted and credited testimony is as follows:

690 Q. (By Mr. O'Gorman) Will you repeat that conversation to us, if you will?

A. He asked me if I was in the union; I told him I was. He says, "What are you going to do about it?"

[17] These findings are based upon Klein's testimony. Roff's version of the events is somewhat at odds with Klein's, especially as to chronology. Roff testified that Klein insisted that he would not work in the shipping department; that after receiving the first certificate he conferred with Israel about the matter who said he'd "see about it"; that Israel never advised him definitely as to Klein's status; and that he did not tell Klein he was "through." Yet Israel admitted that he told Roff that Klein was discharged, and that Roff received instructions from him to advise Klein to this effect. In the circumstances Roff's testimony is not credited by the undersigned.

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I says, "Nothing, I am going to stay in the union." That was all.

Piccolo's mother does "contract" work for the respondent. She "takes work out," and "hands it out to other people." On the occasion of the above conversation with Piccolo, Israel threatened to take the matter up with Piccolo's mother, "but he never went that far."

The undersigned finds that the respondent, by the acts and statements of Israel above related, from on or about July 1941, to date, vilified, disparaged, and expressed disapproval of the Union; interrogated its employees concerning their union affiliations; urged, persuaded, threatened, and warned its employees to refrain from assisting, becoming members of, or remaining members of the Union, and thus interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

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From the above and the entire record, the undersigned is convinced and finds that the respondent discharged Jean Strackman on March 20, 1942, assigned Arthur Klein to more difficult work on May 22, 1942, and on June 3, 1942, discharged him, for the reason that these employees were members of the Union and had engaged in union and concerted activities, and the respondent thus discriminated in regard to their hire and tenure of employment, thereby discouraging membership in a labor organization; by such discrimination the respondent has interfered with, restrained, and coerced and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

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IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE.

The undersigned finds that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce a.. ong the several States, and have led and tend to lead to labor disputes burdening and obstructing commerce, and the free flow of commerce.

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V. THE REMEDY.

Having found that the respondent has engaged in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The undersigned has found that the respondent discriminated in regard to the hire and tenure of employment of Jean Strackman and Arthur Klein, thereby discouraging membership in the Union. In order to effectuate the poli-
696 cies of the Act, it is recommended below that the respondent offer to Jean Strackman and Arthur Klein immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges; and that it make them whole for any loss of pay they may have suffered by reason of the discrimination against them, by payment to each of them of a sum of money equivalent to that which each normally would have earned as wages from the date of discrimination, *i. e.*, March 20, 1942, in the case of Strackman, and

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May 22, 1942, in the case of Klein, to the date of the offer of reinstatement, less the net earnings[18] of each during said periods.

Upon the basis of the above findings of fact, and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW.

1. Wholesale & Warehouse Workers Union, Local 65, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2 (5) of the Act. 698

2. The respondent, by discriminating in regard to the hire and tenure of employment of Jean Strackman and Arthur Klein, thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

3. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act. 699

[18] By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company* and *United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation* v. *N. L. R. B.*, 311 U. S. 7.

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4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS.

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, Regal Knitwear Co., Inc., and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

702 (a) Discouraging membership in Wholesale & Warehouse Workers Union, Local 65, affiliated with the Congress of Industrial Organizations, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other way discriminating in regard to their hire and tenure of employment, or any term or condition of their employment.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, 702 to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Offer to Jean Strackman and Arthur Klein immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges;

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(b) Make whole the said Jean Strackman and Arthur Klein for any loss of pay they may have suffered by reason of the discrimination against them, by payment to each of them of a sum of money equal to that which each would normally have earned as wages during the period from the date of discrimination, *i. e.* March 20, 1942 as to Strackman, and May 22, 1942, as to Klein, to the date of the offer of reinstatement, less the net earnings,[19] of each during said periods;

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(c) Immediately post in conspicuous places in and about its plant in New York, New York, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a) and (b) of these recommendations; (2) that it will take the affirmative action set forth in paragraphs 2 (a) and (b) of these recommendations; and (3) that respondent's employees are free to become or remain members of Wholesale & Warehouse Workers Union, Local 65, affiliated with the Congress of Industrial Organizations, and that the respondent will not discriminate against any employee because of membership in or activity on behalf of that organization;

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(d) Notify the Regional Director for the Second Region in writing within ten days (10) from the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

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[19] See footnote 18, *supra*.

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It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies said Regional Director in writing that it has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended, effective October 28, 1942—any party may within fifteen (15) days from the date of the entry of the
707 order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Shoreham Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as it relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board
708 within ten (10) days from the date of the order transferring the case to the Board.

Dated: March 9, 1943.

PETER F. WARD,
Trial Examiner.

Order Transferring Case to the National Labor Relations Board, Dated March 11, 1943.

709

NLRB-226

UNITED STATES OF AMERICA.
BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the Matter of REGAL KNITWEAR CO., INC. and WHOLESALE & WAREHOUSE WORKERS UNION, LOCAL 65, C. I. O.	Case No. C-2549. (II-C-4511)

710

A hearing in the above-entitled case having been held before a duly designated Trial Examiner and the Intermediate Report of the said Trial Examiner, a copy of which is annexed hereto, having been filed with the Board in Washington,

IT IS HEREBY ORDERED, pursuant to Article II, Section 32, of National Labor Relations Board Rules and Regulations—Series 2, as amended, that Case No. II-C-4511 be, and it hereby is, transferred to and continued before the Board as Case No. C-2549.

711

Dated, Washington, D. C., March 11, 1943.
By direction of the Board:

JOHN E. LAWYER,
Chief, Order Section.

(Seal)

Respondent's Request for Permission to Present Oral Argument, Dated March 19, 1943.

712

UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the Matter of REGAL KNITWEAR CO., INC. and WHOLESALE & WAREHOUSE WORKERS UNION, LOCAL 65, C. I. O.	Case No. C-2549. (II-C-4511)

713

To the National Labor Relations Board:

Regal Knitwear Co., Inc., one of the parties to the above entitled proceeding hereby requests permission to argue orally before the Board, with respect to the intermediate report of the Trial Examiner herein and the exceptions to be filed herein and any further proceedings that may be taken herein.

Dated: New York City, March 19, 1943.

714

REGAL KNITWEAR CO., INC.,
By: CONRAD AND SMITH,
Attorneys for
Regal Knitwear Co., Inc.,
By: JACOB A. SMITH,
Member of the Firm,
Office & P. O. Address,
280 Madison Avenue,
Borough of Manhattan,
New York City.

Telegram, Dated March 25, 1943, Granting All Parties an Extension of Time to File Exceptions and Brief.

715

To:

National Labor Relations Board,
Shoreham Building,
Washington, D. C.

Telegram, Dated March 25, 1943, Granting All Parties an Extension of Time to File Exceptions and Brief.

National Labor Relations Board
NLRB
JEL:JE

716

March 25, 1943

Wholesale & Warehouse Workers Union
13 Astor Place
New York City

Conrad & Smith
280 Madison Avenue
New York City

Re: Regal Knitwear C-2549. At request of respondent, extension granted to April second for filing briefs and exceptions.

717

NATIONAL LABOR RELATIONS BOARD

Respondent's Exceptions to Intermediate Report, Dated April 1, 1943.

718

UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the Matter of REGAL KNITWEAR CO., INC. and WHOLESALE & WAREHOUSE WORKERS UNION, LOCAL 65, C. I. O.	Case No. C-2549.

719

Regal Knitwear Co., Inc. hereby excepts to the intermediate report of the Trial Examiner herein, and to the Findings of Fact and Conclusions of Law therein contained, and to other parts of the record and proceedings herein after referred to, as follows:

1. To the intermediate report as a whole, on the following grounds (said grounds being exclusive of and in addition to the grounds stated in the particular exceptions hereinafter set forth):

720

a. That the Trial Examiner has failed to state his Findings of Fact separately and clearly, and has intermingled the same with lengthy summaries of and various excerpts and quotations from the testimony, thereby making it difficult to determine precisely what facts are found by the Trial Examiner, and making it impossible for Regal Knitwear Co., Inc. to determine which facts are found and which facts are not found, which portions of the testimony are accepted and which portions of the testimony are not accepted, and making it impossible for Regal Knitwear Co.,

Inc. to file exceptions completely preserving its rights herein. 721

b. On the ground that the Trial Examiner's Findings and Conclusions herein are founded upon his assumption of non-existent and unproven facts, and that said Findings and Conclusions are arrived at by a fallacious and improper method of circular reasoning, in that the Trial Examiner without adequate basis in the testimony assumes and purports to find that Regal Knitwear Co., Inc. and Julius Israel, its officer who testified in these proceedings, had an antipathy to the Union, and were anti-union, and 722
that, therefore, it must follow that the testimony of said witness Israel must be disbelieved and discredited in its entirety, and that the testimony of the Union's witnesses must, therefore, be believed and credited in their entirety.

c. That the Trial Examiner assumed that any testimony on the part of the Union not categorically or specifically denied in the testimony by Regal Knitwear Co., Inc.'s witnesses must be accepted as true, notwithstanding any inherent improbability therein contained and notwithstanding the existence of other circumstances revealed by the testimony and casting a doubt upon the truth of any such 723
testimony on the part of the Union's witnesses.

d. That the Trial Examiner's so-called Findings of Fact are contrary to the evidence and to the weight of the evidence, and are based upon insufficient and improper evidence, and that the Trial Examiner arbitrarily elected to accept the testimony of the Union's witnesses *in toto* and to reject the testimony of Regal Knitwear Co., Inc.'s witnesses *in toto*.

Respondent's Exceptions to Intermediate Report, Dated April 1, 1943.

724 2. To the Finding at page 2, lines 44-6, that the Union's organizational campaign which began about 1938 persisted until about July or August, 1941, on the ground that the same is not supported by any evidence, and on the further ground that the same is contrary to the evidence and to the testimony of the Union's witness Strackman, to the effect that although she signed a Union card in 1938, she was again asked to and did sign another Union card for the same Union in 1941.

3. To the Finding that the witness Strackman's version
725 of her two meetings and discussions with the witness Julius Israel were true, on the ground that the same is contrary to the credible evidence and to the weight of the evidence.

4. To the Finding that the witness Julius Israel's testimony as to his meetings and discussions with the witness Strackman was untrue, on the ground that the said Finding is contrary to the credible evidence and to the weight of the evidence.

5. To the Finding, either indirectly or inferentially
726 stated, that the winter vacations given to a number of employees in 1941 were both "extra" vacations and in addition to the usual vacations of the said employees, and not in substitution for their usual summer vacations, and that said winter vacations were given for the purpose and intent of interfering with, restraining and coercing respondent's employees in the exercise of the rights guaranteed them in Section VII of the Act, and constituted an unfair labor practice within the meaning of Section 8, subdivision 1 of the Act.

Respondent's Exceptions to Intermediate Report, Dated April 1, 1943.

6. To the Finding that the bonus of a $25.00 Government bond at Christmas time in 1941 was given with the intention of interfering with, restraining and coercing respondent's employees in the exercise of the rights guaranteed them in Section VII of the Act, and constituted an unfair labor practice within the meaning of Section VIII, subdivision 1 of the Act. 727

7. To the Finding, directly or inferentially stated, that the practice of presenting employees with complimentary tickets for theatrical performances and that the same were particularly for Saturday afternoon matinees given when the Union held certain of its meetings, was instituted and continued with the intention of interfering with, restraining and coercing respondent's employees in the exercise of the rights guaranteed them in Section VII of the Act, and constituted an unfair labor practice within the meaning of Section VIII, subdivision 1 of the Act. 728

8. To the Finding, directly or inferentially stated, that the respondent, through Julius Israel, made efforts to dissuade the witness Strackman from Union activity, on the ground that the same is contrary to the credible evidence and to the weight of the evidence. 729

9. To the Finding, contained in footnote 6 at page 4 of the Intermediate Report and elsewhere contained in the Intermediate Report, that the woman whose discharge was discussed by Strackman and Israel had been an active Union member was induced to leave her employment with respondent, and was placed elsewhere in employment by Israel for about one week, after which she was discharged, and that same was in an attempt to avoid the application

Respondent's Exceptions to Intermediate Report, Dated April 1, 1943.

730 of the Act in the discrimination against said employee by reason of her Union activities, on the ground that the said Finding is contrary to the credible evidence and to the weight of the evidence.

10. To the Finding, that the witness Strackman was discharged because of her Union membership and activities, on the ground that said Finding is contrary to the credible evidence and to the weight of the evidence.

11. To the Finding, at lines 16-21 on page 6 of the Intermediate Report, that the witness Israel discussed Union
731 activity and discouraged Unions and sought to dissuade the witness Klein from joining the Union, and to the acceptance of the witness Klein's testimony with respect thereto, on the ground that said Finding is contrary to the credible evidence and to the weight of the evidence.

12. To the Finding, at lines 22-25 on page 6, and again on page , lines 22-24 of the Intermediate Report, and elsewhere in said Report, that the witness Klein told the witness Israel, at the time that he was interviewed for his position and was engaged, that he had a hernia and would
732 not be able to do "hard work", and that the witness Israel assured the witness Klein that the type of work expected from him would not be "heavy work", on the ground that said Finding is contrary to the credible evidence and to the weight of the evidence.

13. To the Finding, at page 6, line 45 to page 7, line 5, that the conversation therein referred to actually took place, on the ground that the same is contrary to the credible evidence and to the weight of the evidence.

Respondent's Exceptions to Intermediate Report, Dated April 1, 1943.

14. To the Finding, contained at page 7 of the Intermediate Report, that witness Klein was on May 22, 1942 transferred to the shipping room and thereafter ordered to remain there because of his Union membership and activities, on the ground that the same is contrary to the credible evidence and to the weight of the evidence. 733

15. To the Finding, contained at footnote 7 on page 8 of the Intermediate Report, that the testimony of the witness Roff is not to be credited because of variances with the testimony of the witness Klein, and that of the witness Israel, on the ground that said variances are only such variances as are normally found in the testimony of honest witnesses whose testimony has not been coached and who are testifying to their best recollection and not in order to make out the best possible case, and that said variances are proof of the honesty and credibility of such testimony, and not indications of dishonesty and incredibility. 734

16. To the Finding, at page 8, lines 21-30 of the Intermediate Report, that respondent's contentions therein set forth, that the employment of the witness Klein was terminated because he produced two inconsistent statements from his physician, both made within a few days of each other, and both designed to suit the convenience of the witness Klein, and because the witness Klein was physically unable to do the work required of him and was a hazard from the Workmen's Compensation Insurance point of view, are without merit and were advanced merely as pretexts for Klein's discharge, on the ground that the same is contrary to the credible evidence and to the weight of the evidence. 735

Respondent's Exceptions to Intermediate Report, Dated April 1, 1943.

736 17. To the Finding, contained at page 8, lines 29-30, that the true reason for the termination of the employment of the witness Klein was his Union membership and activities, on the ground that the same is contrary to the credible evidence and to the weight of the evidence.

18. To the Finding, that the conversation between the witness Piccolo and respondent's officer, Julius Israel, testified to by said witness Piccolo, constituted a vilification, disparagement and an expression of disapproval of the Union and an interrogation of an employee of the respond-
737 ent concerning his Union affiliations and an urging, persuading, threatening and warning its employee to refrain from assisting, becoming members of or remaining members of the Union, and constituted an interference, restraint and coercion of said employee in the exercise of the rights guaranteed to him in Section VII of the Act, on the ground that said testimony furnishes no basis for such Finding, and that such Finding is contrary to the credible evidence and to the weight of the evidence.

19. To the Finding, contained at page 9, lines 12-21 of
738 the Intermediate Report, that the respondent by the acts and statements of Israel related in the Intermediate Report, vilified, disparaged and expressed disapproval of the Union; interrogated its employees concerning their Union affiliations; urged, persuaded, threatened and warned its employees to refrain from assisting, becoming members of, or remaining members of the Union, and thus interfered with, restrained and coerced and is interfering with, restraining and coercing its employees in the exercise of their rights guaranteed them in Section VII of the Act, on the

739

ground that said Finding is contrary to the law and to the evidence and to the credible evidence and to the weight of the evidence, and on the ground that said alleged acts and statements of Israel were not proven by the evidence, or the credible evidence, or the weight of the evidence in the case.

20. To the Finding at page 9 of the Intermediate Report, that the respondent discharged Jean Strackman on March 20, 1942 for the reason that she was a member of the Union and had engaged in union and concerted activities, and that said respondent thus discriminated in regard to her hire 740
and tenure of employment, thereby discouraging membership in a labor organization; and that by such discrimination has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, on the ground that said Finding is contrary to the law and to the evidence and to the credible evidence and to the weight of the evidence, and on the ground that said alleged acts and statements of respondent were not proven by the evidence, or the credible evidence, or the weight of the evi-
dence in the case. 741

21. To the Finding, at page 9 of the Intermediate Report, that the respondent assigned Arthur Klein to more difficult work on May 22, 1942 and on June 3, 1942 discharged him, for the reason that said Arthur Klein was a member of the Union and had engaged in union and concerted activities, and that said respondent thus discriminated in regard to his hire and tenure of employment, thereby discouraging membership in a labor organization; and that by such discrimination has interfered with, restrained and

742 coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, on the ground that said Finding is contrary to the law and to the evidence and to the credible evidence and to the weight of the evidence, and on the ground that said alleged acts and statements of Respondent were not proven by the evidence, or the credible evidence, or the weight of the evidence in the case.

22. To the Finding, contained in Section IV of the Intermediate Report, on the ground that said Finding is con-
743 trary to the law and to the evidence, and the credible evidence, and contrary to the weight of the evidence, and on the further ground that the alleged activities of the respondent referred to in Section III of the Report were not proven or established as facts by the evidence or by the credible evidence, or by the weight of the evidence.

23. To the Recommendations contained in Section V of the Intermediate Report, on the ground that the Findings upon which same are based are contrary to the law and to the evidence and the credible evidence, and the weight of the
744 evidence, and on the further ground that said Recommendations are unnecessary and would not effectuate or assist in effectuating the policies of the Act.

24. To the Conclusion of Law No. 2, on the ground that the same is contrary to the law and to the evidence and to the credible evidence, and to the weight of the evidence, and on the further ground that the Findings of Fact upon which same is based are not proved by the evidence, or the credible evidence, or the weight of the evidence.

Respondent's Exceptions to Intermediate Report, Dated April 1, 1943.

745

25. To the Conclusion of Law No. 3, on the ground that the same is contrary to the law and to the evidence and to the credible evidence, and to the weight of the evidence, and on the further ground that the Findings of Fact upon which same is based are not proved by the evidence, or the credible evidence, or the weight of the evidence.

26. To the Conclusion of Law No. 4, on the ground that the same is contrary to the law and to the evidence and to the credible evidence, and to the weight of the evidence, and on the further ground that the Findings of Fact upon which same is based are not proved by the evidence, or the credible evidence, or the weight of the evidence. 746

27. To each and every of the Recommendations contained in page 10, line 30 to page 11, line 42 of the Intermediate Report, on the ground that the Findings upon which same are based are contrary to the law and to the evidence and the credible evidence, and the weight of the evidence, and on the further ground that said Recommendations are unnecessary and would not effectuate or assist in effectuating the policies of the Act.

Dated: New York City, April 1, 1943. 747

REGAL KNITWEAR CO., INC.,
By CONRAD & SMITH,
Attorneys.
By JACOB A. SMITH,
A member of the firm.

Notice of Hearing for Purpose of Oral Argument, Dated April 7, 1943.

748

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

In the Matter of REGAL KNITWEAR CO., INC. and WHOLESALE & WAREHOUSE WORKERS UNION, LOCAL 65, C. I. O.	Case No. C-2549

749

NOTICE OF HEARING.

PLEASE TAKE NOTICE that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449), a hearing will be held before the National Labor Relations Board on Tuesday, April 27, 1943, at 10:30 a. m., in Room 326, Shoreham Building, Fifteenth and H Streets, N.W., Washington, D. C., for the purpose of oral argument in the above-entitled matter. Argument will be limited to one-half hour for each party, and

750

you are hereby advised that in view of the Board's docket, no request for additional time made at the hearing will be granted.

You may appear and be heard if you so desire.

Should the party requesting oral argument decide not to appear, such party must immediately notify the Board and all other parties. This is necessary in order to avoid serious inconvenience and expense to other parties.

Dated, Washington, D. C., April 7, 1943.

JOHN E. LAWYER,
Chief, Order Section.

(Seal)

List of Appearances at Oral Argument Held Before the Board on April 27, 1943.

751

UNITED STATES OF AMERICA

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of REGAL KNITWEAR COMPANY, INCORPORATED and WHOLESALE & WAREHOUSE WORKERS UNION, LOCAL 65, C.I.O.	Case No. C-2549

752

Room 442
Shoreham Building
Washington, D. C.

A hearing was held in the above matter for the purpose of Oral Argument at the above place April 27, 1943 at 11:40 A. M.

753

Before:
Harry A. Millis, Chairman
Gerard D. Reilly, Member
John M. Houston, Member
Gilbert Rosenberg, of Counsel to the Board

Appearances for the Company:
J. I. Smith, 280 Madison Ave., New York, New York.
For the Union:

Decision and Order Issued by the Board, May 7, 1943, with Intermediate Report Annexed, Together with
754 Affidavit of Service and Post Office Return Receipts.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

In the Matter of REGAL KNITWEAR CO., INC. and 755 WHOLESALE & WAREHOUSE WORKERS UNION, LOCAL 65, C.I.O.	Case No. C-2549

DECISION and ORDER

On March 9, 1943, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and that it take certain
779 affirmative action, as set forth in the copy of the Intermediate Report annexed hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a brief in support of its exceptions. The Board has considered the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

Pursuant to notice, a hearing was held before the Board at Washington, D. C., on April 27, 1943, for the purpose

of oral argument. The respondent was represented by counsel and participated in the hearing; the Union did not appear. 757

The Board has considered the Intermediate Report, the respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as noted below.

1. The Trial Examiner has found that Arthur Klein was discharged by the respondent on June 3, 1942, because of his union membership and activity, after having been discriminatorily transferred on May 22, 1942, from work as an order picker to more arduous work in the shipping department. We do not agree. The uncontradicted evidence shows that it is customary at the respondent's plant to assign stock clerks and order pickers to work in the shipping department when necessary; and we are not convinced by the record that Klein was selected to work in the shipping department for any reason other than that his services were needed there. After working a day or two in the shipping department, Klein protested against having to work there. He then, within the period of 1 week, gave the respondent two conflicting statements from his doctor concerning the kind of work he was physically capable of doing. The respondent contends, and its secretary testified, that Klein was discharged because of his production of these convenient and conflicting statements as to his physical capabilities and because the respondent did not believe that his physical condition warranted his continued employment even as an order picker. Under the circumstances, we are of the opinion that the 758 759

760 record does not sustain the allegation that Klein's transfer and discharge were due to his union membership and activities. The complaint will therefore be dismissed as to Klein.

2. The Trial Examiner has found that the respondent, by giving some employees, including Jean Strackman, a winter vacation with pay and with free use of an automobile furnished by the respondent, and by distributing to its employees complimentary tickets for theatrical performances given on dates when union meetings were usually held, interfered with, restrained, and coerced its
761 employees in the exercise of the rights guaranteed in the Act. There is evidence in the record which gives rise to the suspicion that the respondent gave Strackman a winter vacation with pay, after she had already had her usual summer vacation in 1941, in order to induce her to abandon her union activities. However, there is no similar evidence with respect to the other employees who were also granted winter vacations, and we do not believe that the record as a whole clearly establishes any improper purpose on the part of the respondent in giving these winter vacations. The Trial Examiner's finding of interference, restraint, and coercion based on the respondent's
762 doing so is hereby reversed. The theatre tickets distributed by the respondent to its employees are shown by uncontradicted evidence to have been obtained by the respondent without cost to it. There is no showing that the tickets were for performances selected by the respondent because they coincided with the times at which union meetings were to be held and would therefore discourage attendance at such meetings. We find that the record does not support the allegation that the respondent's distribu-

tion of theatre tickets constituted interference with its em- 763
ployees' union activities, and the Trial Examiner's finding to the contrary is hereby reversed.

ORDER

Upon the above findings of fact and the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Regal Knitwear Co., Inc., New York City, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from: 764

(a) Discouraging membership in Wholesale & Warehouse Workers Union, Local 65, affiliated with the Congress of Industrial Organizations, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any manner discriminating in regard to their hire and tenure of employment or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its employes in the exercise of the right to self-organization, to form, join, or assist labor organiza- 765
tions, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Jean Strackman immediate and full reinstatement to her former or a substantially equivalent

766 position, without prejudice to her seniority and other rights and privileges;

(b) Make whole Jean Strackman for any loss of pay she has suffered because of the respondent's discrimination against her, by payment to her of a sum of money equal to the amount which she would normally have earned as wages during the period from the date of her discriminatory discharge to the date of the respondent's offer of reinstatement, less her net earnings during that period;

767 (c) Immediately post in conspicuous places in and about its plant in New York City, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Order; and (3) that the respondent's employees are free to become and remain members of Wholesale & Warehouse Workers Union, Local 65, affiliated with the Congress of Industrial Organizations, and that the respond-
768 ent will not discriminate against any employee because of membership in, or activity on behalf of, that organization;

(d) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

AND IT IS FURTHER ORDERED that the complaint 769
be, and it hereby is, dismissed, insofar as it alleges that the respondent discriminated against Arthur Klein.

Signed at Washington, D. C., this 7th day of May 1943.

GERARD D. REILLY
Member
JOHN M. HOUSTON
(Seal) Member
NATIONAL LABOR RELATIONS BOARD

UNITED STATES OF AMERICA 770

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TRIAL EXAMINING DIVISION
Washington, D. C.

In the Matter of REGAL KNITWEAR CO., INC. and WHOLESALE & WAREHOUSE WORKERS UNION, LOCAL 65, C. I. O.	Case No. II-C-4511.

771

Mr. Cyril W. O'Gorman, for the Board.
Conrad & Smith, by Mr. William W. Conrad, of New York, N. Y., for the Respondent.

INTERMEDIATE REPORT.

Statement of the Case.

Upon a seventh amended charge duly filed by the Wholesale & Warehouse Workers Union, Local 65, affiliated with

772 the Congress of Industrial Organizations, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Second Region (New York, New York), issued its complaint dated January 19, 1943, against Regal Knitwear Co., Inc., of New York, New York, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notices of hearing, were duly served
773 upon the respondent and the Union.

With respect to the unfair labor practices, the complaint as amended at the hearing,[1] alleged in substance: (1) that the respondent on or about March 20, 1942, discharged Jean Strackman, and on or about May 22, 1942, assigned Arthur Klein to more arduous or less agreeable work, and discharged him on or about June 3, 1942, for the reason that these employees had joined or assisted the Union, or had engaged in other concerted activities for the purposes of collective bargaining, or other mutual aid and protection; and (2) that from on or about June 24, 1941, to the date
774 of the complaint, the respondent vilified, disparaged, and expressed disapproval of the Union; interrogated its employees concerning their union affiliations; and urged, persuaded, threatened, and warned its employees to refrain from assisting, becoming members of, or remaining members of the Union.

On January 29, 1943, the respondent filed its answer denying, among other things, that it had engaged in the unfair labor practices alleged.

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[1] The complaint was amended on motion of counsel for the Board, without objection, by striking the word "manufacture" from paragraph 2 thereof.

Pursuant to notice, a hearing was held at New York, New 775
York, on February 4 and 5, 1943, before Peter F. Ward, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, and each participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

After both parties had rested, the undersigned granted, without objection, the motion of counsel for the Board to conform the pleadings to the proof with respect to names, dates, and other minor variances. Oral argument, in which 776
the Board and the respondent participated, was thereafter had on the record. While the parties were advised of their right to file briefs with the undersigned, no briefs were filed.

Upon the entire record thus made, and from his observation of the witnesses, the undersigned makes, in addition to the above, the following:

FINDINGS OF FACT.

1. The business of the respondent.

777

The respondent is a New York corporation engaged in the sale and distribution of knit goods. The essential raw materials purchased and used by the respondent in the operation of its business are yarn and cottons. During the six months period prior to February 1, 1943, the respondent shipped approximately $2,300,000 worth of finished products to points outside the State of New York; such shipments represented approximately 84 per cent of the respondent's total sales made during this period. Ap-

778 proximately 75 per cent of the materials received by the respondent at its New York plant for sale and distribution are received from points outside the State of New York. The respondent admits that it is engaged in interstate commerce within the meaning of the Act.

II. The organization involved.

Wholesale & Warehouse Workers Union, Local 65, affiliated with the Congress of Industrial Organizations, is a labor organization, admitting to membership certain employees of the respondent.

779 III. The unfair labor practices.

A. *The discrimination against Jean Strackman and Arthur Klein; interference, restraint, and coercion.*

The record discloses that the Union began an organizational campaign at the respondent's plant about 1938, which persisted until July or August 1941, at which time the campaign became more intensified, and so continued until the present.

Jean Strackman, an employee for some 15 years, testified that she joined the Union in the latter part of July 1941,[2]
780 on her return from a vacation. Strackman further testified that during August 1941, Julius Israel, the respondent's secretary, called Strackman into his office and asked her if she had signed a union card; she replied that she had. In this connection Strackman testified:

Q. Tell us what was said by both Mr. Israel and yourself at that time?

A. I told him I had signed a union card, and he

[2] Strackman also testified that she signed a union card in 1938. However, she was again asked to sign a card in 1941, and did so.

asked me why. So I said, well, people want raises, 781
increases in their salaries and vacations, two-week vacations and sick benefits.

He says, well, I could give you all that.

I says, well, you haven't been giving it.

So he says, well, I will. What do you want a union for?

And then he sat down and he says give me the names of the people that have signed up. And he says, you won't feel sorry, you'll have a job here as long as you like to work here.

So I told him I didn't do those things. 782

And he insisted that I give him the names, and I refused • • •

During this same meeting, according to Strackman, Israel asked her to swear on the grave of his deceased father that she would not "join up" with the Union, and that she would try "to stop" some of the girl employees who had signed union cards. Strackman's testimony is credited by the undersigned.[3]

Sometime subsequent to the above conversation, Strackman, having been informed by the Union that one of the respondent's former women employees had been discharged 783
because of union activities, talked to this woman, and was advised by her that such was the fact. Strackman then went to Israel and accused him of discharging the former

[3] Israel generally denied this and other portions of Strackman's testimony. Strackman was a credible witness. She impressed the undersigned as desirous of relating the truth, and was forthright in her manner. Israel's testimony relating to certain material matters is vague and unconvincing, and where it contradicts Strackman's, the latter's is credited by the undersigned. An example of the unconvincing nature of Israel's testimony is his statement that Strackman was an undesirable employee because she started "taking airs on," and dressed inappropriately for work which "might soil the clothes."

784 employee in question because of union activities. Israel denied the accusation, and stated that he knew where the woman was then employed. He had Strackman accompany him into the office, telephoned the former employee, and asked her if she was in fact working, and if she was satisfied. The woman replied in the affirmative. Israel held the telephone receiver to Strackman's ear so that she could hear the responses. Israel then asked, "Didn't you just hear what she said"? to which Strackman replied, "What she told me the day before is altogether different." Israel then became very angry and seized Strackman by the throat,
785 with the result that she became hysterical and wept. Israel thereupon sought to console Strackman, and in the process kissed her. Strackman left the office and was approached by the respondent's treasurer, Bernot, while she was still crying. He asked her if she wished to go home. She, however, elected to remain at work.[4]

During December 1941, Israel directed employee Sylvia Abrams to make a list of names of employees who wished to go to Miami Beach, Florida, for a winter vacation. Strackman was approached by Abrams and informed the latter that she could not afford such a trip. Israel then
786 conversed with Strackman and told her that he was furnishing "a car, two weeks' pay and that he would send money to" a hotel in Miami Beach. He also stated that the girls could afford such a vacation because "it wasn't very expensive in December." Strackman, in company with Abrams, employees Herman Bogad and wife, and Leo

[4] These findings are based upon Strackman's testimony. Israel, in effect, admitted these facts, but testified that Strackman wept at the replies made by the former employee, and denied that he assaulted Strackman. His testimony insofar as it is at variance with Strackman's, is not credited by the undersigned.

Pfeffer, made the trip to Florida in an automobile supplied by the respondent. Upon their return, a group of other employees were furnished the car which took them to a vacation place in the mountains. These vacations were "paid." At Christmas time in 1941, the respondent gave Strackman a $25 government bond, where as in previous years it usually presented her with six pairs of hose. 787

After the advent of the Union at the respondent's plant in 1938, Israel made it a practice to present employees with complimentary tickets for theatrical performances, and particularly for Saturday afternoon matinees given when the Union held certain of its meetings. This practice had never been indulged in prior to the coming of the Union.[5] 788

Strackman attended union meetings and asked a number of employees to sign cards. Notwithstanding the winter vacation, the gifts of theatre tickets, and Israel's efforts to dissuade her from her union activity, Strackman continued to attend union meetings, until March 20, 1942, when Israel asked her to meet him after working hours. Strackman did so, and testified as follows concerning the events which then transpired:

Q. All right, tell us what happened at that time?

A. He said, I don't know what I'm going to do with you. 789

I says, well, I don't understand. He says, well, I expect I'll be leaving very soon on a vacation and I can't have you around, I'm afraid to trust you. I said, well, I don't understand what you mean by that.

[5] These findings are based upon the testimony of Strackman as corroborated by Arthur Klein, and also Emanuel Blaum, who is presently employed by the respondent. Israel admitted having given the respondent's employees theatre tickets, and testified that the practice started "two or more years ago."

790 He says, well, you know what's been going on all along about a union, he says. I have a list here, he says, of names of people that have signed up, and I expect to get rid of quite a few of these people.

And he did have a list with the names on them.

So I says to him, I don't think that is a very wise thing to do.

And he says, oh, I don't know about that. He says, I'm giving you two weeks pay and any time you need any money if you don't get a job in the near future you can come up and ask me for it.[6]

I told him I didn't accept charity.

791 • • • • •

Q. (By Mr. O'Gorman) Was there anything said in that conversation about unions?

A. So I—asked him if I was being fired for union activities. And he says, I'm not firing you, I'm just telling you to go.

I says, well, that's being fired; if you're not firing me I'm coming back tomorrow.

He says, o. k., then you're fired.

He was very angry.

792 So he says to me, I'm really sorry to let you go, I really need you, but I can't chance it. And—

Q. Did you ask him what he meant by chancing it?

A. Yes, he said that he was afraid to have me around because I would—he says, people working in a place too long get ideas, and that he realized that I had a few ideas that didn't fit in with his. So—

---

[6] The evidence indicates that the woman whose discharge was discussed by Strackman and Israel had been an active union member, was induced to leave her employment with the respondent, and was placed elsewhere in employment by Israel for about one week, after which she was discharged.

Q. Did he mention what those ideas were? 793

A. Well, he did mention union once. He said he had a list of people belonging to the union.

Q. Did you see that list?

A. I did see the list.

Q. Can you tell us any of the names that appeared on that list?

A. Well, I believe he had the name of Herman Bogad, and he did have Leo Pfeffer,[7] and he had the—my name was on it, and Arthur Klein.[8] That's about all I did see.

Israel's version of this occurrence is different. His testi- 794
mony is to the effect that he told Strackman he did not think "this place were suited for her any more," and he advised her "it would be better for her to get another position." Israel contended that in the last two of her fifteen years of employment by the respondent[9] Strackman "fooled around" and talked too much with the respondent's male employees, and dressed in a manner which "disrupted" their work. These contentions are uncorroborated by testimony of any of the male employees in question, or any other person. Strackman received several wage increases during her em- 795
ployment. Moreover, consistent with Strackman's testimony, Israel admitted that he left for Florida the day after Strackman's discharge. In view of Israel's antipathy to the Union as above related, his patently weak contentions,[10]

[7] As found above Herman Bogad and Leo Pfeffer were among those given a paid vacation to Miami Beach, Florida.

[8] As hereafter found the respondent discriminated against Klein because of his union membership and activities.

[9] These years coincide with those during which the Union attempted to organize the employees of the respondent.

[10] With reference to Strackman's mode of attire, it is undisputed that while working she at all times wore a "smock" which completely covered her dress.

796 and the fact that he left for his vacation immediately after he discharged Strackman, the undersigned is convinced and finds that Strackman's testimony relating to the conversation which took place on the day of her discharge reflects the true facts. It is apparent that Strackman was discharged because of her union membership and activities.

Prior to February 1942, Arthur Klein had been unemployed for a number of days. Early in February 1942, one Miss Brown, formerly employed as a stenographer by the respondent, gave Klein a letter of introduction to Alex Roff, the respondent's office and credit manager, in which she
797 asked Roff to "do something for" Klein. Brown also telephoned Roff in Klein's behalf and told him that Klein "was out of work * * * and he has a wife, his wife is * * * going to become a mother."

Roff introduced Klein to Israel and according to Klein's testimony which the undersigned credits, Israel at the outset of his interview with Klein stated, "before I hire you * * * suppose there was some union activity going on, would you become part of it?" Klein replied that if a majority desired a union he "would want a union." Israel
798 then asked Klein "* * * if the majority went off and jumped off a building, would you follow suit?" Klein responded that "there was no analogy there."[11] During this discussion Klein told Israel that he had had a hernia at one time, and would not be able to do "hard work." Israel did not disclose the type of work expected of Klein. He did, however, assure Klein that it would not be "heavy work."[12]

[11] This portion of Klein's testimony is uncontradicted.

[12] Israel denied that at this time Klein informed him that he had had a hernia. Klein was straightforward in his demeanor, and consistent in his testimony. As above indicated the undersigned accords little weight to Israel's uncorroborated testimony.

Israel then hired Klein at a wage of $20 per week and put him to work as a stock clerk. 799

About March 1, 1942, Klein joined the Union and became active in its organizational efforts. He worked as a stock clerk for a time, was then "promoted" to the job of order picker, and on or about April 1 he received an increase in pay of $2 per week. Subsequently Klein met Israel in the plant and thanked him for the raise in pay. Israel then took Klein aside and told him in substance, that he had lost faith in "somebody" with respect to "being in the union." Klein responded that if the implication was that he was "in the union," this was the fact. Israel then called Klein's attention to the fact that the latter was a married man who had "coming responsibilities," was "going to become a father," and would need a friend and some financial aid. Israel also stated that he was "the one" to give financial aid to Klein. He added, "I've always been good to those who have been true and faithful to me. Those who have stuck with me need never worry." Israel also suggested that he might set Klein up in business, supply him with merchandise, and give him any needed financial assistance. Israel asked Klein if there was anything he could do or say that would "discourage" Klein from union membership, and Klein replied in the negative.[13] 800 801

On May 22, 1942, Klein had occasion to go to the shipping room where, as the evidence shows, the work performed was more arduous than the work done by stock clerks or order

[13] The above findings are all based upon Klein's testimony. Israel testified in substance that he merely told Klein that he was glad that Klein received the raise, and that he stated "I hope you'll be deserving of it and continue your good work." Israel did not categorically deny Klein's testimony concerning the former's attempt on this occasion to induce Klein to abandon the Union.

802 pickers. When he arrived there Israel, who was present, ordered him to remain and help in the shipping room. Klein worked in the shipping room the balance of that day. On the next day Klein reported to the order picking department, where he was then working, and was told by the foreman of that department that pursuant to Israel's orders he was to work in the shipping room. Klein worked in the shipping room that day. The following Monday, May 25, Klein went to the sales room where in the presence of Bob Goldberg,[14] an employee, and others, he reminded Israel of the fact that he had had a hernia, would be unable to work
803 in the shipping department, and that if Israel persisted in making him work in the shipping department Klein would deem it a discriminatory action on Israel's part and report it to the National Labor Relations Board. Israel replied that Klein could do as he pleased, but as far as his work was concerned he was to do what he was "instructed to do." Since Klein had advised Israel at the time of his employment that, due to a hernia operation had in the past, he would be unable to perform "heavy work," the undersigned is convinced, under the circumstances herein set forth, that Klein was on May 22 transferred to the shipping
804 room and thereafter ordered to remain there because of his union membership and activities.

Klein then went to a doctor, complained that he had strained himself in the shipping room, and procured a certificate from him.[15] He later went to the plant, talked with Of-

[14] Goldberg, although not shown to be unavailable, was not called as a witness.

[15] To Whom it May Concern. May 25, 1942

Arthur Klein complains of pain in the right groin. He has had a hernia of the right side which was repaired several years ago. I advise that he refrain from work which entails lifting of weights in order to prevent recurrence of hernia.

/s/ LOUIS BASS, M. D.

fice Manager Roff, and gave the doctor's certificate to him. 805
Roff said that Klein looked "bad" and advised him to go home and rest for a few days. Klein kept in touch with Roff on the telephone, and on or about May 28 returned to the plant and talked with Roff, for he had been unable to contact Israel since the meeting in the show room above referred to. Klein told Roff that he was ready to go to work. Roff stated that the respondent had received advices from its insurance agents that Klein could not be employed in the respondent's shipping department. Klein reminded Roff that he was an order picker, but that he would secure from his physician a certificate stating that he was capable of 806
performing "any type of work." Klein was reexamined on June 1, and received such a certificate from his doctor.[16] On about this date he presented this certificate to Roff and stated that he was willing to do any type of work. Klein asked Roff "to take it up" with Israel and Roff agreed to do so and let Klein know what transpired. On June 3 Klein met Roff and was advised by him that Israel told him to tell Klein he was "definitely through."[17]

Israel contended that Klein's employment was terminated because Klein produced two inconsistent statements 807

[16] "To Whom it May Concern, June 1, 1942

I have reexamined Arthur Klein. He no longer complains of any pain in the groin. I find his condition very satisfactory and he may return to any type of work.

/s/ LOUIS BASS, M. D.

[17] These findings are based upon Klein's testimony. Roff's version of these events is somewhat at odds with Klein's, especially as to chronology. Roff testified that Klein insisted that he would not work in the shipping department; that after receiving the first certificate he conferred with Israel about the matter who said he'd "see about it"; that Israel never advised him definitely as to Klein's status; and that he did not tell Klein he was "through." Yet Israel admitted that he told Roff that Klein was discharged, and that Roff received instructions from him to advise Klein to this effect. In the circumstances Roff's testimony is not credited by the undersigned.

808 from his physician, and was accordingly not "the type" to be employed by the respondent. He further stated that Klein was physically incapable of working, in view of his complaint. Considering the respondent's strong opposition to the Union, the physician's final opinion that Klein was able to perform all types of work, and the earlier discrimination against Klein, the undersigned is convinced and finds that the respondent's contentions are without merit, and were advanced as pretexts for Klein's discharge, the true reasons therefor being his union membership and activities.

809 Ralph Piccolo, an employee of 16 years' standing, and a receiving clerk for the respondent, testified that during July or August 1942, Israel spoke to him concerning his membership in the Union. In this connection Piccolo's uncontradicted testimony is as follows:

> Q. (By Mr. O'Gorman) Will you repeat that conversation to us, if you will?
>
> A. He asked me if I was in the union; I told him I was. He says, "What are you going to do about it?" I says, "Nothing, I am going to stay in the union." That was all.

810 Piccolo's mother does "contract" work for the respondent. She "takes work out," and "hands it out to other people." On the occasion of the above conversation with Piccolo, Israel threatened to take the matter up with Piccolo's mother, "but he never went that far."

The undersigned finds that the respondent, by the acts and statements of Israel above related, from on or about July 1941, to date, vilified, disparaged, and expressed disapproval of the Union; interrogated its employees concern-

ing their union affiliations; urged, persuaded, threatened, and warned its employees to refrain from assisting, becoming members of, or remaining members of the Union, and thus interfered with, restrained and coerced and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act. 811

From the above and the entire record, the undersigned is convinced and finds that the respondent discharged Jean Strackman on March 20, 1942, assigned Arthur Klein to more difficult work on May 22, 1942, and on June 3, 1942, discharged him, for the reason that these employees were members of the Union and had engaged in union and concerted activities, and the respondent thus discriminated in regard to their hire and tenure of employment, thereby discouraging membership in a labor organization; by such discrimination the respondent has interfered with, restrained, and coerced and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act. 812

IV. The effect of the unfair labor practices upon commerce.

The undersigned finds that the activities of the respondent set forth in Section III above, occurring in connection with the operations, of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce. 813

V. The remedy.

814 Having found that the respondent has engaged in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The undersigned has found that the respondent discriminated in regard to the hire and tenure of employment of Jean Strackman and Arthur Klein, thereby discouraging membership in the Union. In order to effectuate the policies of the Act, it is recommended below that the respondent offer to Jean Strackman and Arthur Klein immediate and full
815 reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges; and that it make them whole for any loss of pay they may have suffered by reason of the discrimination against them, by payment to each of them of a sum of money equivalent to that which each normally would have earned as wages from the date of discrimination, *i. e.*, March 20, 1942, in the case of Strackman, and May 22, 1942, in the case of Klein, to the date of the offer of reinstatement, less the net earnings[18] of each during said periods.

816 Upon the basis of the above findings of fact, and upon the entire record in the case, the undersigned makes the following:

---

[18] By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. *See Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. *See Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

CONCLUSIONS OF LAW.

817

1. Wholesale & Warehouse Workers Union, Local 65, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2 (5) of the Act.

2. The respondent, by discriminating in regard to the hire and tenure of employment of Jean Strackman and Arthur Klein, thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

3. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act. 818

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS.

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, Regal Knitwear Co., Inc., and its officers, agents, successors, and assigns shall: 819

1. Cease and desist from:

(a) Discouraging membership in Wholesale & Warehouse Workers Union, Local 65, affiliated with the Congress of Industrial Organizations, or any other labor organization of its employees, by discharging or refusing to reinstate any

820 of its employees, or in any other way discriminating in regard to their hire and tenure of employment, or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

821 2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Offer to Jean Strackman and Arthur Klein immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges;

(b) Make whole the said Jean Strackman and Arthur Klein for any loss of pay they may have suffered by reason of the discrimination against them, by payment to each of them of a sum of money equal to that which each would normally have earned as wages during the period from the 822 date of discrimination, *i. e.* March 20, 1942 as to Strackman, and May 22, 1942, as to Klein, to the date of the offer of reinstatement, less the net earnings,[19] of each during said periods;

(c) Immediately post in conspicuous places in and about its plant in New York, New York, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the re-

[19] See footnote 18, *supra*.

spondent will not engage in the conduct from which it is 823
recommended that it cease and desist in paragraphs 1 (a) and (b) of these recommendations; (2) that it will take the affirmative action set forth in paragraphs 2 (a) and (b) of these recommendations; and (3) that respondent's employees are free to become or remain members of Wholesale & Warehouse Workers Union, Local 65, affiliated with the Congress of Industrial Organizations, and that the respondent will not discriminate against any employee because of membership in or activity on behalf of that organization;

(d) Notify the Regional Director for the Second Region 824
in writing within ten days (10) from the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies said Regional Director in writing that it has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and 825
Regulations of the National Labor Relations Board, Series 2—as amended, effective October 28, 1942—any party may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Shoreham Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings

826 upon all motions or objections) as it relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

Dated: March 9, 1943.

PETER F. WARD,
Trial Examiner.

827 NLRB 49

AFFIDAVIT AS TO SERVICE.

In the Matter of REGAL KNITWEAR CO., INC., and WHOLESALE & WAREHOUSE WORKERS UNION, LOCAL 65, C. I. O.	Case No. C-25

828 District of Columbia, ss.:

I, JACK McCALEB being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 7th day of May, 1943, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order (Intermediate Report) to the following named persons, addressed to them at the following addresses:

Wholesale & Warehouse Workers Union, 829
Local 65, C.I.O.
13 Astor Place 69612
New York City

Mr. Mac Mattis, Division Director
104 E. 9th St. 69613
New York City

Regal Knitwear Co. Inc.
1333 Broadway 69614
New York City

Conrad & Smith 830
280 Madison Ave. 69615
New York City

JACK McCALEB.

Subscribed and sworn to
before me this 7th day
of May, 1943.
Kathryn B. Harrell,
Notary Public, D. C.
(Seal) My commission expires March 1, 1947.

831

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832

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Registered Article No. 69612 Insured Parcel No.	Station D New York, N. Y. May 10 1943 12:30 PM
Return to NATIONAL LABOR RELATIONS BOARD (Name of Sender)	
Street and Number, *or Post Office Box,*	Washington, D. C.

833

Form 3811

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(Signature or name of addressee)

2 D. LARAMAE
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

834

Date of delivery 5-10, 1943
Regal Knitwear Co.

C-2549

(Penalty for Private Use to Avoid Payment of Postage, $300)

835

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Official Business

Registered Article
No. 69613
Insured Parcel
No. .....

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C-2549

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(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

840

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C-2549

(Penalty for Private Use to Avoid Payment of Postage, $300)

841

POST OFFICE DEPARTMENT
Official Business

Registered Article
No. 69615
Insured Parcel
No. .....

Postmark of Delivering Office

Station F
New York, N. Y.
May 10 1943
12—M

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or Post Office Box,

Washington,
D. C.

842

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1 CONRAD & SMITH
(Signature or name of addressee)

2 J. N. HOBEN
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

843

Date of delivery 5/10/43

Regal Knitwear Co.

C-2549

Stipulation.

844

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

REGAL KNITWEAR CO., INC.,

Respondent.

845

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

It is hereby stipulated and agreed by and between the attorneys for the parties in the above-entitled case that in printing the transcript of the record in the above case none of the exhibits introduced in evidence at the hearing before the Board shall be printed except as follows:

1. Documents included in Board's Exhibit 1 as follows:

846

Seventh amended charge, complaint and notice of hearing, respondent's answer, and notice of change of place of hearing.

2. Board's Exhibit 2.

It is further stipulated and agreed that those exhibits not printed shall be deemed part of the record before the Court and may be considered by the Court and referred to by the parties; and that either party shall have the right to have any of said exhibits printed and included in the

printed record in the event that petition for certiorari is later filed. 847

Dated August 20, 1943.

Washington, D. C.

/s/ MALCOLM F. HALLIDAY,
Acting General Counsel,
NATIONAL LABOR RELATIONS
BOARD.

....., 848
Attorney for Respondent.

Dated
New York, N. Y.

849

[fol. 284] IN THE UNITED STATES CIRCUIT OF APPEALS FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner

v.

REGAL KNITWEAR CO., Respondent

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Second Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U. S. C. § 151 et seq.), respectfully petitions this Court for the enforcement of its order against respondent, Regal Knitwear Co., Inc., New York City, and its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Regal Knitwear Co., Inc., and Wholesale & Warehouse Workers Union, Lo 65, C. I. O., Case No. C-2549."

In support of this petition, the Board respectfully shows:

(1) Respondent is a New York corporation, engaged in business in the State of New York, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

[fol. 285] (2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board, on May 7, 1943, duly issued its order directed to the respondent, and its officers, agents, successors, and assigns. So much of the aforesaid order, as relates to this proceeding, provides as follows:

Order

Upon the above findings of fact and the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Re-

lations Board hereby orders that the respondent, Regal Knitwear Co., Inc., New York City, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Wholesale & Warehouse Workers Union, Local 65, affiliated with the Congress of Industrial Organizations, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any manner discriminating in regard to their hire and tenure of employment or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargain- [f. 286] ing or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Jean Strackman immediate and full reinstatement to her former or a substantially equivalent position, without prejudice to her seniority and other rights and privileges;

(b) Make whole Jean Strackman for any loss of pay she has suffered because of the respondent's discrimination against her, by payment to her of a sum of money equal to the amount which she would normally have earned as wages during the period from the date of her discriminatory discharge to the date of the respondent's offer of reinstatement, less her net earnings during that period;

(c) Immediately post in conspicuous places in and about its plant in New York City, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs

1 (a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Order; and (3) that the respondent's employees are free to become and remain members of Wholesale & Warehouse Workers Union, Local 65, affiliated with the Congress of Industrial Organizations, and that the respondent will not discriminate against any employee because of membership in, or activity on behalf of, that organization;

[fol. 287] (d) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

(3) On May 7, 1943, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Messrs. Conrad & Smith, respondent's attorneys in New York, New York.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court the transcript of the entire record in the proceedings before the Board, including the pleadings, testimony and evidence, findings of fact, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, tesimony and evidence, and the proceedings set forth in the transcript and upon so much of the order made thereupon set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring respondent, and its officers, agents, successors, and assigns to comply therewith.

National Labor Relations Board, by (s) Ernest A. Gross, Associate General Counsel.

Dated at Washington, D. C., this 29th day of July 1943.

[fol. 288] District of Columbia, *ss*:

Ernest A. Gross, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations

Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board, that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information, and belief.

(s) Ernest A. Gross, Associate General Counsel.

Subscribed and sworn to before me this 29th day of July 1943.

(s) Joseph W. Kulkis, Notary Public, District of Columbia. (Seal.)

My Commission expires April 15, 1947.

[fol. 289] United States Circuit Court of Appeals for the Second Circuit, October Term, 1943

No. 181

(Argued February 2, 1944 Decided February 15, 1944)

National Labor Relations Board, Petitioner,

vs.

Regal Knitwear Company, Respondent

Before: L. Hand, Augustus N. Hand and Frank, Circuit Judges.

On petition by the National Labor Relations Board for an order enforcing a "cease and desist" order of the Board entered against the respondent.

Millard Cass, for the Board.
Edward J. Grenier, for the respondent.

[fol. 290] Per Curiam:

The most important issue in this case is whether there was substantial evidence in support of the Board's finding that Jean Strackman was discharged because of her activity in unionizing the respondent's plant; and that in turn depends upon whether her testimony was so confused and contradictory that the Board was not justified in relying upon it. We assume for argument that testimony may be, upon

the mere reading, so unconvincing as not to support a finding, but Strackman's testimony was very far from that; we find in it no more confusion as to details than is not uncommon in the stories of entirely honest and reliable witnesses. Whether we should have accepted her version of her interview with Israel or his, if we had heard both, is not to the point; her testimony would certainly have supported a verdict, and what will support a verdict will support a finding.

It is another question whether she was entitled to reinstatement as soon as it appeared that immediately after her discharge she got a job in "a defense plant." When the respondent's attorney started to cross-examine her about the wages she had been getting in that plant, the examiner intervened and declared that "in so far as reinstatement of employees is concerned, the fact that substantially equivalent employment has been obtained will be assumed." That ended all inquiry as to the equivalence of the new job with the old. The fact that an employee when re-employed gets as high wages as before, need perform no more arduous work, and enjoys equivalent priorities, does not determine the appropriateness of an offer of reinstatement as a remedy. *Phelps-Dodge Corporation* v. *National Labor Relations Board*, 313 U. S. 177. On the other hand the court in that case declared that the Board must give its reasons for the exercise of its discretion in adopting reinstatement as an [fol. 291] appropriate remedy, when the new employment is equivalent to the old from the point of view of the employee alone. See also *Securities and Exchange Commission* v. *Chenery*, 318 U. S. 80. No reason appears in the Board's decision here for ordering the reinstatement of Strackman, such as appeared in *National Labor Relations Board* v. *van Deusen*, 138 Fed. (2) 893, 895 (C. C. A. 2), and the order would have to be reversed in this particular and sent back for a statement of the Board's reasons, were it not for the following circumstance. After the decision in *Phelps-Dodge Corp.* v. *National Labor Relations Board*, *supra* (313 U. S. 177) the Board in *In re Ford Motor Company*, 31 N. L. R. B. 994, 1099, 1100, gave its reasons for holding an offer of reinstatement to be an appropriate remedy where an employee is discharged. The same reasons, whether they were good or bad, always exist whenever an employee is discharged for union activity, and it would be a barren formality to require their repetition in every case. Until the Supreme Court determines that more is necessary, we shall assume that the

reasons for requiring reinstatement are always the same as were given, once and for all, in the *Ford* Case, and that they need not be stated. They are that without the assurance that such offer will always be forthcoming, employees may hesitate fearlessly to exercise their rights, secured to them by the statute. Whatever we might think of this if the decision were ours, it is abundantly settled that we are not to interfere in such matters, to whose solution the Board is to be deemed to bring qualifications of training and insight not possessed by others—judges included.

The respondent complains of the order in certain other details; but, so far as we find it necessary to take any notice whatever of these, it is enough to refer to our decisions in *National Labor Relations Board* v. *Blackstone Mfg. Co.*, 123 Fed. (2) 633, 635; *National Labor Relations Board* v. *Standard Oil Co.*, 138 Fed. (2) 885, 888.

An enforcement order will issue.

[fol. 292] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner,

vs.

REGAL KNITWEAR CO., INC., Respondent

NOTICE OF SUBMISSION OF DECREE

To: Messrs. Conrad & Smith, 280 Madison Avenue, New York, New York

Please Take Notice that on March 1, 1944, the proposed decree, drafted pursuant to this Court's opinion of February 15, 1944, a copy of which is annexed hereto and made a part hereof, will be transmitted to the Judges of the United States Circuit Court of Appeals for the Second Circuit by the Clerk for signature.

(S.) Howard Lichtenstein, Assistant General Counsel, National Labor Relations Board.

Dated: February 17, 1944.

[fol. 293] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner,

vs.

REGAL KNITWEAR CO., INC., Respondent

On Petition for Enforcement of an Order of the National Labor Relations Board

DECREE ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

This cause came on to be heard upon the petition of the National Labor Relations Board to enforce its decision and order dated May 7, 1943. The Court on February 2, 1944, heard arguments of respective counsel and has considered the briefs of the parties. On February 15, 1944, the Court, being fully advised in the premises, handed down its decision enforcing the said order. In conformity therewith, it is hereby

Ordered, Adjudged, And Decreed that Regal Knitwear Co., Inc., New York City, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Wholesale & Warehouse Workers Union, Local 65, affiliated with the Congress of [fol. 294] Industrial Organizations, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any manner discriminating in regard to their hire and tenure of employment or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Jean Strackman immediate and full reinstatement to her former or a substantially equivalent position, without prejudice to her seniority and other rights and privileges;

(b) Make whole Jean Strackman for any loss of pay she has suffered because of the respondent's discrimination against her, by payment to her of a sum of money equal to the amount which she would normally have earned as wages during the period from the date of her discriminatory discharge to the date of the respondent's offer of reinstatement, less her net earnings during that period;

(c) Immediately post in conspicuous places in and about its plant in New York City, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Decree; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Decree; and [fol. 295] (3) that the respondent's employees are free to become and remain members of Wholesale & Warehouse Workers Union, Local 65, affiliated with the Congress of Industrial Organizations, and that the respondent will not discriminate against any employee because of membership in, or activity on behalf of, that organization;

(d) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Decree what steps the respondent has taken to comply herewith.

Learned Hand, Judge, United States Circuit Court of Appeals for the Second Circuit. Augustus N. Hand, Judge, United States Circuit Court of Appeals for the Second Circuit.

March 3, 1944.

[Endorsed:] N. L. R. B. v. Regal Knitwear. Decree. United States Circuit Court of Appeals: Second Circuit. Filed Mar. 3, 1944. Alexander M. Bell, Clerk.

[fol. 296] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 297] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, limited to the sixth question presented by the petition for the writ and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office - Supreme Court, U. S.
FILED
MAY 15 1944
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 1003 86

REGAL KNITWEAR CO., INC.,

Petitioner,

against

NATIONAL LABOR RELATIONS BOARD.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

WILLIAM W. CONRAD,
JACOB I. SMITH,
JOHN P. CHANDLER,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 1003

REGAL KNITWEAR CO., INC.,
Petitioner,

against

NATIONAL LABOR RELATIONS BOARD.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable Chief Justice of the United States and the Honorable Associate Justices of the Supreme Court of the United States:

Regal Knitwear Co., Inc., your petitioner, respectfully prays that a writ of certiorari issue to review a judgment of the United States Circuit Court of Appeals for the Second Circuit, entered March 3, 1944 (140 Fed. (2nd) 746), which decreed enforcement of an order of the National Labor Relations Board against your petitioner, in a proceeding pursuant to Section 10 of the National Labor Relations Act (49 Stat. 452).

Summary Statement of Matters Involved.

After the filing of a Seventh Amended Charge (R. 205-6), this proceeding was instituted by the issuance of a Complaint (R. 207-210) which alleged violations of Sections 8 (1) and 8 (3) of the Act, as follows:

> 1. That petitioner discharged one Jean Strackman for union membership or activities (fol. 624);
>
> 2. That petitioner assigned one Arthur Klein to more arduous or less agreeable work, and subsequently discharged him, for like reason (fol. 624);
>
> 3. That petitioner vilified, disparaged and expressed disapproval of the Union; interrogated its employees concerning their Union affiliations; and urged, persuaded, threatened and warned its employees to refrain from assisting, becoming members of or remaining members of the Union (fol. 625).

The Trial Examiner sustained all three charges (R. 231).

Petitioner duly filed written exceptions to the Examiner's Intermediate Report, wherein (R. 240) it excepted to the Report as a whole upon four separate grounds (R. 240-1), and also as to twenty-six specific matters (R. 241-9).

The Board's combined "Decision and Order" (R. 252-7), enforcement of which was decreed by the Circuit Court, in part affirmed and in part reversed the Examiner.

The Board reversed the Examiner as to the following matters:

> 1. The Board held that "the record does not sustain the allegation that Klein's transfer and discharge were due to his union membership and activities" (fols. 759-760) and dismissed the complaint insofar as it alleged that petitioner discriminated against Arthur Klein (fol. 769).
>
> 2. The Board found that the giving of winter vacations with pay to some employees (including Jean Strackman), with free use of an automobile, did not constitute interference, restraint or coercion. The

Board's decision specifically states: "We do not believe that the record as a whole clearly establishes any improper purpose on the part of the respondent in giving these winter vacations" (fol. 761).

3. The Board found that "the record does not support the allegation that the respondent's distribution of theatre tickets constituted interference with its employees' union activities, and the Trial Examiner's finding to the contrary is hereby reversed" (fols. 762-3).

The Board's decision and order (R. 252-7) makes no findings of fact or conclusions of law in affirmance of the Intermediate Report, but merely states generally that the Intermediate Report, exceptions, brief, and record have been considred and that the findings, conclusions and recommendations of the Examiner, except as noted, are adopted by the Board.

The Board's order (R. 255-7) directs that petitioner herein, its officers, agents, successors and assigns shall:

1. Cease and desist from:

a. Discouraging membership in Wholesale and Warehouse Workers Union, Local 65, CIO (hereinafter referred to as Local 65), or in any other labor organization of its employees, by discharging or refusing to reinstate employees or in any manner discriminating in regard to hire and tenure of employment or any term or condition of employment;

b. "In any other manner" interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action:

a. Offer reinstatement to Jean Strackman;

b. Make said Jean Strackman whole for any loss of pay suffered because of petitioner's alleged discrimination against her;

c. Post and maintain for sixty days notices to its employees stating:

(1) That petitioner will not engage in the conduct specified in paragraphs 1a and b;

(2) That petitioner will take the affirmative action specified in paragraphs 2a and b;

(3) That petitioner's employees are free to become and remain members of said Local 65, and that petitioner will not discriminate against any employee because of membership or activity on behalf of that organization;

d. Notify the Regional Director in writing within ten days what steps petitioner has taken to comply with the order.

The order further directs the dismissal of the complaint insofar as it alleges that petitioner discriminated against Arthur Klein.

Further details as to the matters involved herein appear below under the heading "Reasons Relied on for the Allowance of the Writ."

The Questions Presented.

Petitioner seeks the review by this Court of the following questions raised below:

1. Whether, because of the fact that in *In Re Ford Motor Co.*, 31 N. L. R. B. 994, 1099-1100, the Board stated certain reason why in its opinion an offer of reinstatement is an appropriate remedy in all cases, and that the decisive considerations as to reinstatement do not vary from case to case, the Board is relieved from the obligation of examining the facts in each case to determine what, if any, reasons exist, upon those facts, for directing reinstatement, and from its obligation to give in each case a clear indication

that it has actually exercised its discretion, and the basis for such exercise. (*Phelps Dodge Corporation* v. *National Labor Relations Board*, 313 U. S. 177.)

2. Whether the Board may or should require an employer to name, in a posted notice relating to the employer's policies and its employees' rights to engage in union activities, a union which is not shown and not claimed to represent any substantial number or proportion of the employees.

3. (a) Whether the requirement of Section 10(c) of the National Labor Relations Act that the Board shall state its findings of fact, is satisfied by a discursive statement of the evidence, pro and con, in narrative form; and (b) whether, where both the Board and its Trial Examiner stated that their decisions are based upon said discursive narrative statement of the evidence and upon "the entire record", and the Board reverses certain important findings of the Trial Examiner and dismisses certain charges based thereon, without making its own findings, or stating specifically which findings of the Examiner remain in the case and are adopted by the Board, the record discloses the basis of the Board's order with sufficient certainty to be entitled to enforcement by the Court.

4. Whether the Circuit Court of Appeals for the Second Circuit, while recognizing, in *National Labor Relations Board* v. *Standard Oil Co.*, 13 Fed. (2nd) 885, 888, that its decision in *National Labor Relations Board* v. *Air Associates*, 121 Fed. (2nd) 586, 592, is in conflict with the decision of this Court in *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, is nevertheless correct in following its rulings in said *Air Associates* and *Standard Oil Co.* cases, and in declining to follow the ruling of this Court in the *Express Publishing Co.* case.

5. Whether the Board may direct that an employer shall cease and desist from discouraging membership in labor

organizations by refusing to reinstate employees, or by in any manner discriminating in regard to their hire or in regard to the terms or conditions of employment, where there is only a finding of discrimination in the tenure of employment of one employee, and no finding of discrimination in regard to hire or in regard to terms or conditions of employment, or by refusal of reinstatement to any employee, and where there is no substantial evidence of anti-union bias or any finding that the employer is likely to discriminate in regard to hire, terms or conditions of employment, or by refusal of reinstatement.

6. Whether, in the entire absence of any special circumstances, such as appear in *Southport Petroleum Co.* v. *National Labor Relations Board*, 315 U. S. 100, the Board may properly direct its order against the employer's successors and assigns, as well as against the employer itself.

7. (a) Whether, as a matter of law, testimony can be so confused, and its essential allegations so destroyed by direct self-contradiction, that it cannot constitute substantial evidence sufficient to support a finding; and (b) whether the testimony of Strackman in this case was so confused and destroyed by self-contradictions that the Board had no right to base a finding and order upon it.

Reasons Relied On for the Allowance of the Writ.

The following reasons are relied on for the allowance of the writ:

1. *As to the effect to be given to the decision of this Court in Phelps Dodge Corporation* v. *National Labor Relations Board, 313 U. S. 177:*

The Board did not state its reasons for holding the reinstatement of Strackman to be an appropriate remedy notwithstanding her having obtained equivalent employment

elsewhere, nor did the Board even refer to any statement of such reasons *dehors* the record in this case.

The Circuit Court held that the requirement laid down by this Court in *Phelps Dodge Corporation* v. *National Labor Relations Board*, 313 U. S. 177, that the Board actually exercise its discretion and state its reasons therefor, was satisfied by the fact that in an unrelated case, i. e., *In Re Ford Motor Co.*, 31 N. L. R. B. 994, 1099-1100, the Board had stated certain reasons for holding an offer of reinstatement to be an appropriate remedy in all cases. The Circuit Court ruled that

> "Until the Supreme Court determines that more is necessary, we shall assume that the reasons for requiring reinstatement are always the same as were given, once and for all, in the *Ford* case, and that they need not be stated."

Petitioner respectfully submits that the statement contained in the *Ford* case is, in effect, the setting up of a general rule or policy, and not an exercise of the discretion which this Court, in the *Phelps Dodge* case, *supra*, stated was required of the Board. Following the Board's decision in the *Ford* case, supra, it was pointed out in an article entitled "Reinstatement and Back Pay—the Phelps Dodge Case," appearing in 42 Columbia Law Review 443, 450-1, that the reasons stated by the Board in the *Ford* case were not even based upon the record or facts in that case, and that if the Board were to rest its future decisions upon the *Ford* case, it would reduce to an empty formality so much of such decisions as conform to this Court's admonition to the Board in the *Dodge* case to indicate that it has exercised its discretion.

The Board and the Court below in this case have gone even farther than anticipated or apprehended by the writer of said Law Review article, for nowhere in this case did the

Board even refer to the *Ford* case or to the allegedly invariably inapplicable reasons formulated therein. An important question of federal law is presented by the decision of the Court below, and, as was inferentially indicated in the Court's opinion (R. 287), that question should be settled by this Court.

2. *As to whether a union not shown and not claiming to represent any substantial number or proportion of employees, should be named in a notice required to be posted.*

The order directs the posting of a notice containing, among other things, a statement that petitioner's employees are free to become and remain members of Local 65, and that petitioner would not discriminate against any employee because of membership in or activity on behalf of that organization. The notice is also required to state that petitioner will not discourage membership in that named union or in any other labor organization of its employees, in the manner specified in paragraph 1(b) of the order, discussed below.

There was no claim or testimony in the record that the named union had secured membership or even support from any substantial number or proportion of petitioner's employees.

It is petitioner's contention that to require the specification of said union by name in the notice which the order requires be posted, is contrary to the policy of the Act, as it favors the named union as against any and all other unions, suggests to petitioner's employees that that union has the blessing of the Board and perhaps of the courts, and leads the employees to infer that said union was in fact or had been determined to be in fact an organization of petitioner's

employees, instead of an outside union which at best has unsuccessfully sought to become such an organization.

Petitioner submits that the foregoing presents an important question of federal law which has not been, but should be, settled by this Court.

3. *As to the requirement of Section 10(c) of the Act that the Board state its findings of fact:*

The Board in part affirmed and in part reversed the Trial Examiner, both as to findings of fact and as to conclusions (R. 253-5). It made no express findings of fact in support of its order, but merely adopted, in general language, those findings, conclusions and recommendations of the Examiner not in conflict with that portion of the decision which reversed the Examiner's findings, conclusions and recommendations as to certain matters.

The Examiner's so-called findings of fact were not specially or separately stated in the manner contemplated by Equity Rule 70½, but rather are interwoven in and form part of a general discursive statement of the evidence in the case, pro and con, in narrative form (R. 219-232), and the finding of the ultimate facts charged in the complaint (R. 231, fol. 693) is stated to be based upon "the above" (referring to the discursive statement of the evidence) and "the entire record."

This Court has had occasion, from time to time, to rule upon the form and sufficiency of findings of fact required under other Federal statutes. The question presented under Section 10(c) of the National Labor Relations Act is of considerable importance, and not free from difficulty. Varying rules have been set up under various Federal and State Statutes (See annotation in 146 A. L. R. 223), and it is submitted that the question under the Act is of sufficient importance to call for a determination by this Court.

4. *As to the effect to be given to the decision of this Court in National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426:

Paragraph 1(a) of the Board's order directs that petitioner cease and desist from discouraging Union membership by discharging or refusing to reinstate any of its employees, or in any manner discriminating in regard to their hire and tenure of employment or any term or condition of their employment.

Presumably this paragraph rests upon the finding of discrimination in the discharge of Strackman.

Paragraph 1(b) of the order directs that petitioner cease and desist from "in any other manner" interfering with, restraining or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act.

Presumably paragraph 1(b) of the order is based upon the theory that a violation of Section 8(3) of the Act, which is enjoined by paragraph 1(a) of the order, is also a violation of Section 8(1) of the Act, and justifies a provision in the form of paragraph 1(b) of the order.

In the *Express Publishing Co.* case, *supra*, this Court held that a violation of the Act in one respect does not justify a blanket order against violation in any manner whatsoever, such as is contained in paragraph 1(b) of the Board's order herein; that the Board's orders, like injunction orders of a court, must state with reasonable specificity the acts an employer must do or refrain from doing; and that only acts like or related to those acts found by the Board to have been committed may be restrained by the Board's order. Specifically, this Court held that a finding of a violation of Section 8(5) by refusal to bargain collectively, and a finding of a violation of Section 8(1) by making certain statements to employees, cannot sustain an injunctive order in the form of that found in paragraph 1(b) of the order herein.

The Circuit Court of Appeals for the Second Circuit, in *National Labor Relations Board* v. *Standard Oil Co.*, 138 Fed. (2nd) 885, 888, adverting to the decision of this Court in the *Express Publishing Co.* case, *supra*, declined to follow that decision of this Court until this Court should pass upon the subject again.

This position of the Circuit Court was taken by reason of its having theretofore laid down a contrary rule in *National Labor Relations Board* v. *Air Associates*, 121 Fed. (2nd) 586, 592, and with express recognition of the fact that its decision was in conflict with that of this Court in the *Express Publishing Co.* case. Said Circuit Court has taken the same position in other cases decided by it since its decision in the *Standard Oil* case, *supra*. In other words, the Circuit Court has erected and is following a rule of *stare decisis* for its own Circuit, despite a clear contrary holding by this Court.

In view of the Circuit Court's recognition, in the *Standard Oil* case, that its rule is in conflict with the decision of this Court in the *Express Publishing Co.* case, petitioner submits that this Court should take jurisdiction for the purpose of either correcting the Court below, or otherwise settling the question presented.

5. *As to the permissible scope of an order under Section 8(3) of the Act:*

This question relates to a possible extension of the rule of the *Express Publishing Co.* case, *supra*.

Paragraph 1(b) of the order directs that petitioner cease and desist from discouraging membership in labor organizations (a) by discharging employees; (b) by refusing to reinstate employees; (c) by in any manner discriminating in regard to their hire; (d) by in any manner discriminating in regard to their tenure of employment; (e) by in any manner discriminating in regard to any term or condition of employment.

In view of the Board's reversal of its Examiner's findings as to Arthur Klein, the distribution of theatre tickets, and the giving of winter vacations, the only evidence remaining in the case that may make any claim to any degree of substantiality is the evidence with respect to Strackman's discharge. However, there is no evidence whatsoever in the record that petitioner refused reinstatement to any employee, or discriminated in regard to hire, or in regard to any term or condition of employment. In fact, the testimony of Klein was that when he applied for employment he made known to petitioner that he would join and support a union and that he was engaged notwithstanding that fact.

In view of the fact that the Board's orders in this respect, hitherto unchallenged, are usually in the form of the order herein, petitioner submits that there is presented an important question of Federal law which has been decided by the Court below in a way probably in conflict with the decision of this Court in the *Express Publishing Co.* case, *supra*, and which in any event should be settled by this Court.

6. *As to the propriety of directing the order against the employer's successors and assigns:*

The Circuit Court of Appeals for the Seventh Circuit, in *Butler Bros.* v. *National Labor Relations Board*, 134 Fed. (2nd), 981, 985, and in *Polish National Alliance* v. *National Labor Relations Board*, 136 Fed. (2nd) 175, in the absence of special circumstances, none of which appear herein (contrast *Southport Petroleum Co.* v. *National Labor Relations Board*, 315 U. S. 100), has held that an order should not be directed against the employer's "successors and assigns."

The Circuit Court of Appeals for the Second Circuit, in *National Labor Relations Board* v. *Blackstone Manu-*

facturing Co., 123 Fed. (2nd) 633, 635, followed by that Court in this instant case, holds to the contrary.

This Court has held open (*Southport Petroleum Co.* v. *National Labor Relations Board*, 315 U. S. 100, at p. 107) the question of the liability of successors and assigns in the absence of special circumstances, although it has sustained orders directed against the employer and its successors and assigns in cases where the point has not been raised by the parties (cases cited at 315 U. S. 100, at p. 106, footnote 6).

In view of the common practice of the Board to direct its orders against successors and assigns, petitioner requests that this Court grant a review herein so that the conflict between the two Circuits may be settled.

7. *The alleged discriminatory nature of the discharge of Jean Strackman;*

Petitioner submits that the questions presented under this heading (questions 7a and b, supra, p.) are of substantial importance to petitioner and other employers in view of the limited scope of review by the Courts of findings of fact by the Board.

Prayer.

Wherefore, your petitioner prays that a writ of certiorari issue out of this Court to the United States Circuit Court of Appeals for the Second Circuit, commanding said Court to certify and send to this Court, on a day to be designated, a full and complete transcript of the record and all proceedings of said Court had in this cause, to the end that this cause may be reviewed and important questions of federal law decided by said Court, and the conflict between the decisions of the said Circuit Court of Appeals

and the Circuit Court of Appeals for the Seventh Circuit, be reviewed, settled and determined by this Court; and that the order of said Circuit Court of Appeals in this cause be reversed; and that petitioner be granted such other and further relief as may be proper.

REGAL KNITWEAR CO. INC.,
By WILLIAM W. CONRAD,
JACOB I. SMITH,
JOHN P. CHANDLER,
Counsel.

CONRAD and SMITH,
Attorneys for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 1003

REGAL KNITWEAR CO., INC.,

Petitioner.

against

NATIONAL LABOR RELATIONS BOARD.

BRIEF IN SUPPORT OF PETITION.

The Opinion Below.

The opinion of the Court below, dated February 15, 1944, is reported in 140 Fed. (2) 746.

Jurisdiction.

The decree of the Circuit Court of Appeals for the Second Circuit, which is sought to be reviewed, was entered on March 3, 1944. Enforcement has been stayed pending application for a writ of certiorari.

This is a proceeding pursuant to Section 10(e) of the National Labor Relations Act (Act of July 5, 1935) for enforcement of an order made by the National Labor Relations Board pursuant to Section 10(c) of said Act. By said order said Board directed petitioner to reinstate in its

employ with back pay one Jean Strackman, to cease and desist from alleged violation of Sections 8(3) and 8(1) of said Act, and to post certain notices. The Circuit Court directed enforcement of the Board's order in its entirety.

The jurisdiction of this Court to review the decree of the Circuit Court is invoked under Section 10(e) of said Act and Section 240(a) of the Judicial Code.

Statement of the Case.

A summary statement of the case is set forth at pp. 2-4 of the petition.

A summary of the argument is set forth in the index to this brief.

Specification of Assigned Errors to be Urged.

It is intended to urge the following errors:

1. It was error to direct reinstatement of Jean Strackman, an employee who had secured equivalent employment elsewhere, and payment to her of back pay, without the reasons why such reinstatement would effectuate the policies of the Act being stated or referred to by the Board anywhere in the record of this case. Even if a statement of assertedly generally applicable reasons made in another case before the Board, not involving this employee or this employer, were to be held to be sufficient and not required to be restated or referred to by the Board in the record of this case, there is no substantial evidence nor any finding of fact in this case to jusify the applicability of such alleged reasons to the facts in this case.

2. It was error and contrary to the policies of the Act to require Wholesale & Warehouse Workers Union, Local 65, CIO, to be named in the notices which petitioner was directed to post.

3. It was error to direct enforcement of the order in the absence of the making and statement by the Board of findings of fact with sufficient clarity to justify its order.

4. It was error, upon the record herein, to decline to follow the rule laid down by this Court in the *Express Publishing Co.* case, and to direct petitioner to cease and desist from "in any other manner" interfering with, restraining or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and to post notices that it would not engage in such conduct.

5. It was error, upon the record herein, to direct petitioner to cease and desist from discouraging membership in labor organizations by refusing to reinstate employees, or by in any manner discriminating in regard to the hire, tenure of employment, and terms and conditions of employment of employees, and to post notices that it would not engage in such conduct.

6. It was error to direct the order against petitioner's successors and assigns.

7. It was error to sustain the finding that Jean Strackman's discharge was in violation of the Act, and to enforce those parts of the Board's order which were based thereon.

Argument.

Point I.

Reinstatement and Back Pay Should Have Been Denied on the Ground That the Record Does Not Show the Exercise by the Board of the Discretion Entrusted to It or Any Basis for the Exercise Thereof.

The decision of the Court below tends virtually to nullify the rule laid down by this Court in *Phelps Dodge Corpora-*

tion v. *National Labor Relations Board*, 313 U. S. 177, that it is incumbent upon the Board to disclose in the record that it has exercised its discretion in ordering reinstatement and back pay to an employee who has obtained equivalent employment elsewhere, and the basis upon which such discretion is claimed to have been properly exercised.

The Court below, in its opinion (R. 288), agreed with petitioner herein that (we quote from the opinion):

> "No reason appears in the Board's decision here for ordering the reinstatement of Strackman, * * *."

The Court, however, declined to reverse the Board's order for this omission, on the ground that in *In Re Ford Motor Co.*, 31 N. L. R. B. 994, 1099-1100, the Board had stated certain reasons why in its opinion reinstatement is an appropriate remedy to effectuate the policies of the Act, and had declared that those reasons do not vary from case to case. The opinion of the Court below states that inasmuch as the Board had declared in the *Ford* case that the same reasons, whether good or bad, always exist whenever an employee is discharged for union activity, it would be a barren formality to require their repetition in every case. The Court below therefore stated in its opinion that until this Court should determine that more is necessary, it would assume that the reasons for requiring reinstatement are always the same as were given in the *Ford* case and that they need not be restated in each particular case.

The Board in the *Ford* case held that there were three reasons for directing reinstatement, namely:

1. To restore the victim of discrimination to his former position;

2. "More significantly, to dissipate the deeply coercive effects upon other employees who may desire self organiza-

tion, but who have been discouraged therefrom by the threat to them implicit in the discrimination."

3. To prevent employers from eliminating union adherents from their plants by discharging such adherents and relying upon the fact that necessity almost inevitably compels a discharged employee to seek the best available other employment, and the probability that such search would be successful.

It must be the sense of the decision of this Court in the *Phelps Dodge* case, *supra*, that where a discharged employee has secured equivalent employment, the first reason, namely, to restore him to his former position, is not sufficiently directed towards effectuation of the policies of the Act to be determinative.

As to the second reason, petitioner respectfully submits that the applicability thereof to a particular case must necessarily depend upon substantial evidence and a finding in the particular case that a coercive effect upon other employees was actually accomplished, or at least that other employees knew of the discharge and the reasons therefor. These circumstances necessarily must vary from case to case. Nowhere in this case is there any evidence of any kind that other employees were coerced by, or even knew of, Miss Strackman's discharge or the alleged reasons therefor. The second reason stated by the Board in the *Ford* case therefore cannot be relied upon to sustain the Board's order in this case.

It is submitted that the third reason advanced by the Board in the *Ford* case is similarly inapplicable to this case and cannot sustain the reinstatement order, for the following reasons:

(a) We submit that the nullification or prevention of the elimination of union adherents from a plant, by recall-

ing such union adherents from other equivalent employment and reinstating them in their former positions, is not necessarily related to the effectuation of the policies of the Act. The objective of the Act is to prevent obstructions in interstate commerce by reason of industrial unrest (Section 1 of the Act), and to promote the peaceful settlement of disputes by providing legal remedies for the invasion of employees' rights of self organization and collective bargaining by restraint or coercion (*National Labor Relations Board* v. *Fansteel Metallurgical Corporation*, 306 U. S. 240). The unfair labor practices interdicted by Section 8 of the Act are prohibited because they provoke or tend to provoke industrial unrest affecting interstate commerce. (*National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601.) We believe that it would be carrying the Act beyond the constitutional powers of Congress to hold that the policy of the Act is to foster collective bargaining for its own sake, unrelated to any considerations having to do with the prevention of industrial unrest. Accordingly, it is submitted that the third reason advanced by the Board is not valid in any case.

(b) Even if it were held that the third reason advanced by the Board is a valid one and does relate to the effectuation of the policies of the Act, nevertheless that reason would be inapplicable upon the record of this case. The effect of denying reinstatement which is postulated by the Board, namely, that employers could then eliminate union adherents from their plants, does not exist upon the record in this case. There remains in the record only one alleged discharge for union membership or activity, namely, the discharge of Strackman, who, by her own admission (R. 10, 26, 37, 48), was not active in the union. It cannot be said that by the discharge of Strackman alone petitioner herein

has made any substantial move in the direction of eliminating union adherents from its plant.

(c) In addition to the foregoing considerations, attention is directed to the fact that in formulating the statement of reasons in the *Ford* case, the Board did not discuss the particular circumstances of that case, but merely engaged in a general discussion of why, as a general proposition, the securing of equivalent employment should not prevent it from directing reinstatement. As was pointed out by Milton H. Feinberg, Esq., in his article entitled "Reinstatement and Back Pay—The Phelps Dodge Case" (1942) 42 Columbia Law Review 443, 450-1:

> "Whether or not it (the reasoning of the Board in the *Ford* case) complies with the ruling the Supreme Court in the *Phelps Dodge* case is another matter. It may be questioned that formulation of reasons for ordering the reinstatement of equivalently employed workers which 'do not vary from case to case' constitutes compliance with Justice Frankfurter's demand that 'the Board is to give clear indication that it has exercised the discretion with which Congress has empowered it.' In effect, the Board is setting up a general rule, consistent compliance with which will reduce to an empty formality so much of its future decisions as shall conform to the Court's admonition to indicate the exercise of discretion."

Petitioner therefore respectfully submits that both the Board in the *Ford* case and the Court below in this case were in error in assuming that the decisive considerations upon the question of reinstatement of discharged employees who have obtained equivalent employment elsewhere do not vary from case to case, and that the statement of reasons or general policy made by the Board in the *Ford* case should not be permitted virtually to nullify the principle laid down by this Court in the *Phelps Dodge* case.

Point II.

It Was Contrary to the Policies of the Act to Require Wholesale & Warehouse Workers Union, Local 65, CIO, to Be Named in the Notices Which Petitioner Was Directed to Post.

Paragraph 1 (a) of the order directs petitioner, its officers, agents, successors and assigns, "to cease and desist from discouraging membership in the Wholesale and Warehouse Workers Union, Local 65, affiliated with the Congress of Industrial Organizations, or in any other labor organizations of its employees * * *."

Paragraph 2(c) (1) of the order directs the posting of notices to the effect that the petitioner will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1(a) and 1(b) of the order.

Paragraph 2(c) (3) directs that the notices state that petitioner's employees are free to become and remain members of the Wholesale and Warehouse Workers Union, Local 65, affiliated with the Congress of Industrial Organizations, and that petitioner will not discriminate against any employee because of membership in, or activity on behalf of, that organization.

It will be noted therefore that a particular union is mentioned by name in paragraphs 1(a), 2(c) (1) (by reference to paragraph 1(a)), and 2(c) (3) of the order.

Paragraph 1(a) complies at least with the ruling in *Polish National Alliance* v. *National Labor Relations Board*, 136 Fed. (2) 175, by the inclusion of the words 'or in any other labor organization of its employees.' Paragraph 2(c) (3), however, limits itself solely to the named union, without the inclusion of the words 'or in any other labor organization of its employees'.

Had petitioner of its own volition posted a notice stating that it would not discourage membership in the Wholesale and Warehouse Workers Union, Local 65, CIO, or in any other labor organization of its employees, and that its employees are free to become and remain members of said named union, it would have left itself open to the charge:

> 1. That it was seeking to encourage membership in the named union; and
>
> 2. That it was foisting upon its employees the statement that the named union was a labor organization of its employees;

and it is conceivable that some rival union could have successfully initiated and prosecuted a proceeding against petitioner under Section 10 of the Act.

There is neither evidence nor finding of fact in this record that the named union had a majority or even any substantial number or proportion of petitioner's employees as its members or adherents. There is neither evidence nor finding that any appreciable number or proportion of petitioner's employees had been discouraged from membership, or at least hesitated at membership, because of petitioner's alleged attitude towards the union herein, or even that any substantial number of employees had any knowledge of such alleged attitude. Petitioner respectfully submits that under such circumstances it is directly contrary to the policies of the Act to require petitioner to post notices naming the union herein and describing it, either directly or by inference, as a labor organization of its employees. The Board should be held to have no wider license than the employer to discriminate in favor of any particular union, whether directly by its own action, or indirectly by compelling action on the part of the employer.

Point III.

The Case Should Have Been Remanded for the Making of Clear Findings of Fact.

Two questions are involved under this point:

1. Whether the form of the so-called findings of fact used by the Board in this and many other cases is a compliance with the requirement of Section 10(c) of the Act;

2. Whether, assuming that in the ordinary case the form of the findings of fact would have been sufficient, that form is nevertheless insufficient in this case because the Board failed to indicate the basis of its order with sufficient clarity, because it made no express findings of fact in support of its order, but merely stated that it adopted those findings, conclusions, and recommendations of the Examiner not in conflict with that portion of the decision which reversed the Examiner's findings, conclusions, and recommendations as to certain matters.

In *National Labor Relations Board* v. *Thompson Products, Inc.* (Sixth Circuit, 1938) 97 Fed. (2) 13, the Court, after pointing out that the respondent in that case had not attacked the form of the Board's findings, stated.

> "The finding of facts of the Board is not in the proper form. It has mingled therein statements of witnesses and expressions of opinion. No reference should be made to the evidence nor any discussion injected into the ultimate finding of facts upon which the Board rests its order. There should be a clean-cut statement of the ultimate facts without incorporating therein the evidence or the reasoning by which the Board arrived at its finding. If the Board desires to discuss or emphasize any part of the evidence or give its reasons for

its findings, it should do so in the form of an opinion or memorandum which should not be incorporated into, or connected with, the special finding of facts."

Cf. *National Relations Board* v. *Remington Rand, Inc.*, (Second Circuit) 94 Fed. (2) 862, 865.

This Court, in *United States v. Baltimore & Ohio Railroad*, 293 U. S. 454, 464, a suit to set aside an order of the Interstate Commerce Commission, stated:

> "It is true that formal and precise findings are not required, under Section 14 (1) of the Interstate Commerce Commission Act, which declares that the report 'shall state the conclusions of the Commission together with its decision' * * * That provision relieves the Commission from making comprehensive findings of fact similar to those required by Equity Rule 70½."

Section 14 (1) of the Interstate Commerce Act, thus cited and construed by this Court, differs both from Section 10 (c) of the National Labor Relations Act and from Section 14 (1) of the original Interstate Commerce Commission Act prior to such amendment. Section 14 (1) of the original Interstate Commerce Commission Act before its amendment required that the Commission's report should "include findings of fact upon which the conclusions of the Commission are based", thereby being similar to the language of Section 10 (c) of the National Labor Relations Act, which requires that the Board "shall state its findings of fact." We submit, under the first question stated in this point, that the change effected by the amendment to the Interstate Commerce Commission Act, and the construction placed upon the new language by this Court in the *Baltimore & Ohio* case, *supra*, indicates that the former language of the Interstate Commerce Commission

Act, and the similar language in Section 10 (c) of the National Labor Relations Act, should be construed as requiring more formal or at least more specific statements of fact than are found in the instant case.

As to the second question raised under this point:

The Examiner's so-called findings of fact, referred to and adopted in part by the Board, are not specially or separately stated, but rather are interwoven in and form part of a general discursive statement of the evidence in the case, pro and con, in narrative form (R. 219-232). His findings of the ultimate facts charged in the complaint (R. 231, fol. 693) are stated to be based upon "the above" (referring to the discursive statement of the evidence) and upon "the entire record."

Petitioner submits that an examination of the entire record, and a mental elimination therefrom of that evidence which is not substantial (e. g., the evidence of the witness Piccolo, set forth at pp. 170-173 of the record which seems clearly unsubstantiated, although deemed otherwise by the Examiner (R. 230-231)), and also of the evidence in support of the findings of the Examiner which were expressly reversed by the Board (R. 253-255), leaves it in doubt as to precisely what formed the basis of the order herein, other than testimony as to the alleged discharge of Strackman. We submit that under such circumstances the case should at least have been remanded to the Board for the making of clear findings of the facts upon which it rests its ultimate decision. *United States* v. *Baltimore & Ohio R. R.*, 293 U. S. 454; *Great Northern Railway Co.* v. *Department of Public Works*, 161 Washington 29.

Point IV.

The Court Should Have Declined to Enforce That Part of the Board's Order Which Requires Petitioner to Cease and Desist from "in Any Manner" Interfering with, Restraining, or Coercing Its Employees in the Exercise of the Rights Guaranteed by Section 7 of the Act.

This point presents the anomalous situation of a direct refusal by the Circuit Court to overrule its own line of decisions which it expressly recognizes are in conflict with the decisions of this Court in *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426.

The opinion of the Court below expressly relies upon the prior decision of that Court in *National Labor Relations Board* v. *Standard Oil Co.*, 138 Fed. (2) 885, 888. The question presented is outlined in some detail at pp. — of the petition herein, and in view of the nature of the question it is believed that it need not be briefed at this stage of the proceedings before this Court.

Point V.

The Court Should Have Declined to Enforce That Part of the Order Which Directs That Petitioner Cease and Desist from Discouraging Membership in Labor Organizations by Refusing to Reinstate Employees, by Discriminating in Regard to Their Hire, and by Discriminating in Regard to Any Term or Condition of Employment.

This question likewise arises under this Court's decision in *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, referred to in Point IV, *supra*.

The question presented is whether those portions of the cease and desist order which are referred to in the heading

of this point, may properly be included in the order, where (a) there has been no showing of any discrimination or likelihood of discrimination by refusal to reinstate, or of discrimination in regard to the hiring of employees or in regard to terms or conditions of employment, (b) the only evidence left in the case after the partial reversal of the Trial Examiner by the Board is evidence with respect to the discharge of a single employee, and (c) there is no evidence or finding as to discrimination or likelihood of discrimination in the respects mentioned in the heading of this point.

The question is outlined at pp. — of the petition herein, and, in the interest of brevity, will not be further briefed at this stage of the proceedings in this Court.

POINT VI.

The Order Should Not Have Been Directed Against Petitioner's Successors or Assigns.

As stated at pp. 12-13 of the petition, there is a direct conflict between the Seventh Circuit and the Second Circuit as to the propriety of directing an order against the employer's successors or assigns.

The Circuit Court of Appeals for the Second Circuit has held in *National Labor Relations Board* v. *Blackstone Manufacturing Co.*, 123 Fed. (2) 633, 635, cited by the Court below as authority in this case, that the order may properly be so directed, but in the same case stated that the addition of these words adds nothing to the order.

This Court in *Southport Petroleum Co.* v. *National Labor Relations Board*, 315 U. S. 100, at pp. 106-7, took a diametrically opposed position. It stated:

> "The additional evidence (that since the making of the order the employer had dissolved and transferred its assets) was immaterial for the further reason that

the Board's order ran not only to the petitioner, but also to its 'officers, agents, successors and assigns.' Granting the truth of every one of petitioner's allegations, it still is possible that the Board's order may yet be the basis—and the indispensable basis—of liability on the part of any of these persons, regardless of any present incapacity of petitioner to perform, or liability on its part for failure to perform, its duty of reinstatement. Of course, we do not pass on the question whether any such liability actually exists; all we hold is that there has not been a sufficient showing by the petitioner to negative the possibility which we note."

We submit that the fact that this Court, in the absence of objection, has often sustained orders directed against the employer's successors or assigns, is of no bearing upon the question now presented, inasmuch as the point has been directly raised by the petitioner both in the Court below and in this Court, as well as before the Board.

Petitioner submits that the question is of far-reaching importance and should be authoritatively determined by this Court, so that it may be known whether or not the Board, by directing its order against successors or assigns of an employer, may in effect impose a continuing servitude upon the assets of the employer in the hands not only of the employer but also of its transferees in good faith.

Point VII.

There Was no Substantial Evidence That the Discharge of Jean Strackman Was in Violation of the Act.

The Court below, in its opinion, declined to pass upon the question as to whether evidence of discrimination may be so confused and contradictory as not to constitute substantial evidence sufficient to sustain a finding. The decision of that question was avoided by the finding of the Court that Strackman's testimony was no more confused and self-

contradictory than that of many honest witnesses whose evidence is accepted as sufficient to sustain the verdict.

Petitioner recognizes that it is for the Board, and not for the Court, to pass upon the credibility of witnesses and to draw inferences from the testimony. Those inferences, however, must be reasonable. It is petitioner's contention that Strackman's testimony was subject to more than ordinary self-contradiction, in that the points upon which Strackman contradicted herself indicated beyond doubt that respondent's witness' version of the facts was true, and Strackman's version false. As was stated by the Court in *National Labor Relations Board* v. *Sun Shipbuilding and Drydock Co.*, 135 Fed. (2) 15, 25, the evidence which the Board accredits must be such as a reasonable mind may accept as adequate to support a conclusion. Petitioner believes that neither the Board, nor its Examiner, nor the Court below, saw fit to analyze Strackman's testimony to discover its inherent weakness and its utter lack of any substantial weight. In the interest of brevity, the making of such an analysis will be reserved for such further proceedings as may be taken before this Court in the event that the writ be allowed.

Conclusion.

The Petition for a Writ of Certiorari Should Be Granted.

Respectfully submitted,

WILLIAM W. CONRAD,
JACOB I. SMITH,
JOHN P. CHANDLER,
Of Counsel.

CONRAD AND SMITH,
Attorneys for Petitioner.

APPENDIX.

NATIONAL LABOR RELATIONS ACT (49 STAT. 452)

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* * * *

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

Sec. 10(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 86

REGAL KNITWEAR CO., INC.,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONER

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 86

REGAL KNITWEAR CO., INC.,
Petitioner,
against
NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR REGAL KNITWEAR CO., INC., PETITIONER

The Opinion Below

The opinion of the Court below, dated February 15, 1944 (R. 287), is reported in 140 Fed. (2d) 746.

Jurisdiction

The decree under review is one of enforcement of an order of the National Labor Relations Board made in a proceeding pursuant to Section 10(c) of the National Labor Relations Act.

Certiorari was granted by this Court on October 9, 1944 (R. 292), limited to the sixth question presented by the petition for the writ.

The jurisdiction of this Court is invoked under Section 10(e) of said Act, and Section 240 of the Judicial Code.

The Question Presented

The single question now before this Court is whether the Board's order and the Circuit Court's decree of enforcement were properly directed against petitioner's successors and assigns.

Statute Involved

The only statute believed to be involved is Section 10(c) of the National Labor Relations Act (hereinafter referred to as the Act), the pertinent provisions of which are set forth in the Appendix.

Statement of the Case

The decree below (R. 290) directed that Regal Knitwear Co., Inc., "its officers, agents, successors and assigns", shall: (1) cease and desist from discouraging Union membership by discharging or refusing to reinstate employees, or by discriminating in regard to hire, tenure, or any term or condition of employment, and from in any other manner interfering with its employees in the exercise of the rights granted in Section 7 of the Act; (2) offer one Jean Strackman reinstatement and back pay; (3) post certain notices; (4) notify the Regional Director of the Board of the steps taken to comply with the decree.

Argument

There is no evidence in the record before the Board or before the Circuit Court which even remotely tends to indicate that petitioner has or ever had any intention of liqui-

dating or reorganizing its business, or transferring its assets to any other person, firm or corporation, for any purpose whatsoever, and no such claim has ever been made in this case.

The considerations appearing in *Southport Petroleum Company* v. *National Labor Relations Board*, 315 U. S. 100; *National Labor Relations Board* v. *Hopwood Retinning Co.*, 104 Fed. (2d) 302; *Walling* v. *James V. Reuter, Inc.*, 321 U. S. 671, and similar cases, wherein there was a record of accomplished or contemplated change in the corporate form or entity under circumstances indicating a studied attempt to avoid compliance with the Court's decree, are therefore entirely lacking in this case.

The Circuit Courts in the Sixth and Seventh Circuits, both of which hold that the words "successors and assigns" have no proper place in an order of the Board or in an enforcement decree, at least in cases in which such special circumstances are not shown to appear,[1] and the Circuit Court of Appeals in the Second Circuit,[2] appear to agree that the inclusion of the words "successors and assigns" in the Board's order and in the enforcement decree do not impose any liability upon such successors and assigns which would not have existed had the words not been included.

Thus, in the *Bachelder* case,[3] the Circuit Court of Appeals for the Second Circuit, in an enforcement proceeding wherein the employer was a receiver, in modifying its decree by striking out the words "successors and assigns,

[1] *National Labor Relations Board* v. *Cleveland-Cliffs Iron Co.*, 133 Fed. (2d) 295 (6th Circuit; *National Labor Relations Board* v. *Bachelder, Receiver of Hoosier Veneer Co.*, 125 Fed. (2d) 387 (7th Circuit).

[2] *National Labor Relations Board* v. *Blackstone Manufacturing Co., Inc.*, 123 Fed. (2d) 633, 635 (2nd Circuit) followed by the court below in the instant case.

[3] Note 1 supra.

including Hoosier Veneer Co. in the event the receivership is discharged," said:

> "The reason assigned for striking the words 'successors and assigns including Hoosier Veneer Co. in the event the receivership is discharged,' is that the decree as now entered operates as an injunction against one not subject to any enforcement decree. A mere change in name or in apparent control where in fact there was no such change, would be no reason for striking from the decree the words 'including Hoosier Veneer Co. in the event the receivership is discharged,' in the event there would be no good faith successor or assign of the original company, and the latter would still be amenable to the decree. Whether there is a good faith successor or assign in this case we do not here decide. Under Southport Petroleum Co. vs. NLRB, 62 S. Ct. 452, decided January 16, 1942, the place to try that question of fact is either before the Board or before this court if and when a petition is filed here to show cause why the decree is not complied with.
>
> However, the words 'successors or assigns' in the decree connote good faith successors and assigns, and for that reason they should be and are hereby stricken."
>
> (125 Fed. (2d) 387, at 388)

Similarly, the Court in the Sixth Circuit in the *Cleveland-Cliffs Iron Co.* case,[4] in eliminating the words "successors and assigns" from its order, said:

> "We have no doubt that a merely colorable transfer which is not a true change of ownership would, without the provision, properly raise a question of fact to be resolved by the Court if contempt proceedings are instituted. *Southport Petroleum Company* vs. *NLRB*, 315 U. S. 100. This was, no doubt, impliedly the view in the Seventh Circuit in cases decided after the *Southport* decision. *NLRB* vs. *Bachelder*, 125 Fed. (2d) 387;

[4] Note 1 supra.

NLRB vs. *Stone*, 125 Fed. (2d) 752. The provision should be eliminated from the order."

(133 Fed. (2d) 295, at p. 302.)

The Second Circuit, while differing with the Sixth and Seventh Circuits by holding that the words "successors and assigns" are properly includable in the order and decree, and declining to eliminate them, nevertheless agrees with those Circuits to the extent of expressly taking the position that the words do not impose any liability which would not exist without them. We quote from that Court's opinion in the *Blackstone* case:[5]

> "In allowing these words (successors and assigns) to stand we wish to make it clear, however, that we do not hold that a 'successor' or an 'assign' will be in contempt of our order if it should (even after notice of the order, but without participating with the respondent in any disobedience by it) do exactly those things which the order forbids. In other words, we do not hold that those words impose any liability which would not exist without them."
>
> (123 Fed. (2d) 633, at p. 635)

We submit that, upon principles firmly established in equity cases in this[6] and other courts, the words "successors and assigns," although adding nothing to the decree, should not have been included in the decree by the Court below, and, having been included, should be stricken therefrom by this Court.

In the *Chase National Bank* case,[7] one of the questions before this Court was the propriety of a decree of permanent injunction whereby the decree was made to run, in form, not only against the City of Norwalk, which was the

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[5] Note 1 supra.

[6] *Chase National Bank* v. *City of Norwalk*, 291 U. S. 43; *Scott* v. *Donald*, 165 U. S. 107; *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229.

[7] Note 6 supra.

party to the suit, and against its officers, agents and employees, but also against "all persons whomsoever to whom notice of this order shall come." This Court held at pages 436-437:

> "* * * The decree entered by the district court was clearly erroneous insofar as it enjoined 'all persons to whom notice of the order of the injunction should come from taking any steps or action in the state court.' The city alone was named as defendant. No person other than the city was served with process. None came otherwise before the court. The prayer of the bill sought relief solely against the city and 'its officers, officials, agents, employees and representatives.' It is true that persons not technically agents or employees may be subsequently enjoined from knowingly aiding a defendant in performing a probibited act if their relation is that of associate or confederate. Since such persons are legally identical with the defendant and privy to his contempt, the provision merely makes explicit as to them which the law already implies. See *In re Lennon*, 166 U. S. 548. But by extending the injunction to all persons to whom notice of the injunction should come, the district court assumed to make punishable as a contempt the conduct of persons who act independently and whose rights have not been adjudged according to law. See *Alemite Mfg. Corp.* vs. *Staff*, 42 Fed, (2d), 832. Under the clause inserted in the decree officers of the State of Ohio might be proceeded against for contempt, if they should apply to the State court to enforce its judgment, although acting solely in the performance of their official duty. To subject them to such peril violates established principles of equiy jurisdiction and procedures. *Scott* vs. *Donald*, 165 U. S. 107, 117; *Hitchman Coal & Coke Co.* vs. *Mitchell*, 245 U. S. 229, 234. Those principles require that the clause be limited to confederates or associates of the defendant."

Similarly, in the *Scott* case,[8] this Court held:

> "The decree is also objectionable because it enjoins persons not parties to the suit. This is not a case where the defendants named represent those not named. Nor is there alleged any conspiracy between the parties defendant and other unknown parties. The acts complained of are tortious, and do not grow out of any common action or agreement between the constables and the sheriffs of the State of South Carolina. We have, indeed, a right to presume that such officers, although not named in this suit, will, when advised that certain provisions of the act in question have been pronounced unconstitutional by the court to which the Constitution of the United States refers such questions, voluntarily refrain from enforcing such provisions; and we do not think it comports with well settled principles of equity procedure to include them in an injunction in a suit in which they were not heard or represented or to subject them to penalties for contempt in disregarding such an injunction.
>
> The decree of the court below should therefore be modified by being restricted to the parties named as plaintiff and defendant in the bill, and this is directed to be done, and it is otherwise, affirmed."

Petitioner has the right to raise this question now, for its rights are prejudiced by the inclusion of these words in the decree below, and it would be too late for petitioner to raise the objection at some future time in the event of contempt proceedings against its successors or assigns, for petitioner would not then be directly affected by those proceedings. Petitioner's rights are prejudiced because, as pointed out by the Court in the *Cleveland-Cliffs Iron Co.* case,[9] the inclusion of the provision in the decree below would make it difficult, and perhaps a practical impos-

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[8] Note 6 supra.

[9] Note 1 supra.

sibility, for petitioner to sell or otherwise transfer its business or a portion thereof to an independent bona fide purchaser, should legitimate occasion therefor arise. Petitioner might not then be able to convince the proposed purchaser, by citation of legal authority or otherwise, that the decree, which purports to bind such purchaser does not in fact bind it, and in any event petitioner should not be placed under the necessity of attempting that task. It might even be that such a purchaser could seek, successfully or otherwise, to avoid its contract of purchase by reasoning analogous to that of the cases in the law of real property sales which permit contract vendees to reject titles legally sound but subject to litigation to defend their sufficiency. It may well be that the words "successors and assigns" in the decree do not have the effect of imposing a servitude upon petitioner's assets and business in the hands of such successors and assigns; nevertheless, petitioner's title, while legally free from such a servitude, might still be condemned as unmarketable or, as some cases put it, unmerchantable.

There is no warrant in Section 10(c) of the Act for any order or decree against any person other than the person named in the complaint. Section 10(c) provides that if upon all the testimony taken the Board shall be of the opinion that "any person named in the complaint" has engaged in or is engaging in unfair labor practices interdicted by the Act, then the Board shall state its findings of fact and shall issue and cause to be served "on such person" an order "requiring such person" to cease and desist, and "requiring such person" to take such affirmative action as will effectuate the policies of the Act. Nowhere is any authority conferred upon the Board or upon the Court to "require" any other person to cease and desist, or to take any affirmative action. Nevertheless, that is what the Board's order herein, and the decree of enforce-

ment herein, purport to do by the inclusion of the words "successors and assigns" in such order and in such decree.

The elimination of the words "successors and assigns" from the decree herein would not prevent the enforcement of the decree against petitioner's successors or assigns upon a showing of appropriate circumstances, such as were found to exist in the *Southport Petroleum* case, the *Hopwood Retinning Co.* case, or the *James V. Reuter* case.

Thus, in the *James V. Reuter, Inc.* case, where in the words "successors and assigns" did not appear in the decree, this Court stated that the decree might "in appropriate circumstances, be enforced against those to whom the business may have been transferred, whether as a means of evading the judgment or for other reasons", and that the question as to how far a successor is bound by the decree might be fully investigated by the district court in subsequent contempt proceedings. Such cases not only are no authority for the inclusion of the words "successors and assigns" in the decree; they clearly indicate that the inclusion of such words is not necessary either to the proper enforcement of the Board's order or to effectuate the policies of the Act.[10]

Conclusion

The words "successors and assigns" should be stricken from the enforcement decree.

Respectfully submitted,

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[10] National Labor Relations Act, Section 10(c).

APPENDIX

National Labor Relations Act

Sec. 10 * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

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In the Supreme Court of the United States

OCTOBER TERM, 1944

REGAL KNITWEAR COMPANY, INCORPORATED,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 1003

REGAL KNITWEAR COMPANY, INCORPORATED,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 287–289) is reported in 140 F. (2d) 746. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 252–276) are reported in 49 N. L. R. B. 560.

JURISDICTION

The decree of the court below (R. 290–291) was entered on March 3, 1944. The petition for a

writ of certiorari was filed on May 15, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether the Board is required, in ordering reinstatement of an unlawfully discharged employee who has secured substantially equivalent employment elsewhere, to restate the considerations which, in the exercise of its administrative judgment, the Board has previously determined warrant reinstatement as an appropriate remedy in all such cases.

2. Whether, upon finding that petitioner discouraged membership in a labor organization, the Board abused its discretion in ordering petitioner to post notices that its employees are free to become or remain members of such organization and that petitioner will not discriminate against employees because of membership or activity in the organization.

3. Whether the Board, after considering the entire record in the case, may adopt as its own, findings of fact and conclusions of law of its Trial Examiner with which it agrees, without restating such findings and conclusions.

4. Whether the cease and desist provisions of the Board's order, which were sustained by the

court below, were warranted by the Board's findings.

5. Whether the Board abused its discretion in directing its order against petitioner and "its officers, agents, successors, and assigns."

6. Whether there is substantial evidence to support the Board's findings that petitioner interfered with, restrained, and coerced its employees in violation of Section 8 (1) of the Act, and discriminatorily discharged employee Strackman in violation of Section 8 (3) and (1) of the Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix, *infra*, p. 26.

STATEMENT

Upon the usual proceedings, the Board, on May 7, 1943, issued its findings of fact, conclusions of law, and order (R. 252–276). In accordance with its recent practice, the Board in its Decision and Order adopted as its own those findings of fact and conclusions of law of its Trial Examiner with which it agreed, without restating them. After reciting that it had considered the Intermediate Report of its Trial Examiner, petitioner's exceptions thereto, the latter's brief in support of its exceptions, and the entire record in the case, the Board stated that it "hereby adopts the findings, conclusions, and recommenda-

tions of the Trial Examiner, except as noted below" (R. 253). The Board noted those findings, conclusions, and recommendations of the Trial Examiner with which it disagreed, and then set forth its Order (R. 253–257). The Intermediate Report is appended to the Board's Decision and Order (R. 257–276). The pertinent facts, as found by the Board and shown by the evidence, may be summarized as follows:[1]

Jean Strackman had worked for petitioner for 15 years at the time of her discharge (R. 260; 9, 16, 85, 130). She was one of the first of petitioner's employees to become interested in unionization of the plant, and signed a C. I. O. union card in 1938 (R. 260; 26–28, 45–46). When another union affiliated with the C. I. O.[2] inaugurated a membership campaign in July 1941, Strackman again signed a union card (R. 260; 10–11, 26–28). This time she attended meetings (R. 263; 10, 15), and solicited other employees to join the Union (R. 263; 10, 34).

A few weeks later, in August 1941, petitioner's secretary, Julius Israel, summoned Strackman to his office and asked her whether she had signed a union card. When Strackman replied that she had, Israel asked her why she joined the Union.

[1] In the following statement the references preceding the semicolon are to the Board's findings, and the succeeding references are to the supporting evidence.

[2] Wholesale & Warehouse Workers' Union, Local 65 (C. I. O.), the complaining union (R. 260; 10–11).

Upon being informed of the advantages the employees expected to secure from union membership, Israel said, "Well, I could give you all that." When Strackman retorted that he had not done so, Israel replied, "Well, I will. What do you want a union for?" Israel also asked Strackman to disclose to him the names of union members among petitioner's employees and, for such disclosure, offered her a job for as long as she wished to remain. Strackman refused to reveal the names of the other union members. During the same conversation, Israel tried to persuade Strackman to leave the Union and to induce others to do likewise (R. 260–261; 8, 11–13).

Strackman was undeterred by Israel's opposition to unionization, and later in the same month, August 1941, she questioned him concerning the dismissal of another employee who claimed to have been discharged for her union activities (R. 261–262; 40–44, 174–177, 31–32, 137–138).

On March 20, 1942, Israel informed Strackman that he anticipated leaving on his vacation shortly, and asserted, "I can't have you around, I'm afraid to trust you." Israel explained this distrust by stating: "Well, you know what's been going on all along about a union." Israel added that he had a list of the employees who had joined the Union and expected "to get rid of quite a few of these people." Israel then dis-

charged Strackman, explaining that he was really sorry to let her go but that he could not risk retaining her because she had "a few ideas" that did not "fit in with" his (R. 263–265; 15–17, 38–39, 85). Israel left for his vacation the next day (R. 265; 152–153). The Board concluded from this evidence that Strackman was discharged for her union membership and activities (R. 265–266, 253–256), and that petitioner thereby discouraged membership in the Union in violation of Section 8 (3) and (1) of the Act (R. 273, 253).

In addition to questioning Strackman concerning her union membership and attempting to induce her to withdraw from the Union, Israel also approached employee Piccolo while the latter was at work in petitioner's plant and inquired whether he was a union member. Upon receiving an affirmative response, Israel asked what he was "going to do about it," and threatened to take the matter up with Piccolo's mother, who does "contract" work for petitioner (R. 270; 171–173). The Board concluded that by these acts petitioner restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (1), (R. 270–271, 273, 253).

During the hearing before the Trial Examiner, petitioner attempted to show that since her discharge Strackman had obtained regular and sub-

stantially equivalent employment elsewhere (R. 24). The Examiner stopped this line of questioning with the statement that "for the purpose of the case insofar as reinstatement of employees is concerned, the fact that substantially equivalent employment has been obtained will be assumed" (R. 24). The Board, without mentioning the issue of substantially equivalent employment, found that the reinstatement of Strackman would effectuate the policies of the Act (R. 272, 253).

The Board's order directed petitioner and "its officers, agents, successors, and assigns" to cease and desist from discouraging membership in Wholesale & Warehouse Workers' Union, Local 65 (C. I. O.), the complaining union, or in any other labor organization of its employees, by discharging, refusing to reinstate, or in any manner discriminating in regard to the hire, tenure of employment, or terms or conditions of employment of its employees, and to cease and desist from in any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act (R. 255). The Board also ordered petitioner to offer reinstatement with back pay to Strackman and to post appropriate notices stating that it will not engage in the conduct from which it is ordered to cease and desist, that it will take the affirmative action ordered by the Board, and that its employees are free to become and

remain members of Wholesale & Warehouse Workers' Union, Local 65 (C. I. O.), and that petitioner will not discriminate against any employee because of membership in, or activity on behalf of, that organization (R. 255–256).

Thereafter the Board filed a petition for enforcement in the court below (R. 284–287). On February 15, 1944, the court delivered its *per curiam* opinion (R. 287–289), and on March 3, 1944, entered its decree (R. 290–291), enforcing the Board's order in full.

ARGUMENT

1. Petitioner erroneously contends (Pet. 4–5, 6–8, 17–21) that reinstatement should have been denied Strackman because she had obtained substantially equivalent employment elsewhere, and that the Board did not make manifest in its decision the considerations underlying its administrative judgment that reinstatement would effectuate the policies of the Act. It was clearly proper for the Board to order the reinstatement of Strackman even though she had obtained substantially equivalent employment elsewhere. *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 192–197, 200; *National Labor Relations Board* v. *Weirton Steel Co.*, 135 F. (2d) 494, 498 (C. C. A. 3); *National Labor Relations Board* v. *Van Deusen*, 138 F. (2d) 893, 895 (C. C. A. 2); *National Labor Relations Board* v. *J. G. Boswell Co.*, 136 F. (2d) 585, 596–597 (C. C. A. 9). Moreover,

the Board has complied with the mandate of this Court in the *Phelps Dodge* case (313 U. S. at 192–197, 200), and "has exercised the discretion with which Congress has empowered it" (*id.* at 197). After the *Phelps Dodge* decision, the Board, in the exercise of its administrative discretion, fully considered in *Matter of Ford Motor Co.*, 31 N. L. R. B. 994, 1099–1100, the question whether it would effectuate the policies of the Act to direct that offers of reinstatement be made to employees who were discriminatorily discharged and thereafter obtained regular and substantially equivalent employment. In the *Ford Motor* case the Board expressly determined that reinstatement of the victims of anti-union discrimination is an appropriate means of effectuating the policies of the Act, irrespective of whether such persons have obtained regular and substantially equivalent employment elsewhere. The Board based this determination upon several grounds:

> * * * The Act postulates, and the fact is readily verified by common experience, that anti-union discrimination exercises a coercive effect not only upon the immediate victim, but upon all present or future employees of the particular employer; it impresses upon them the danger to their welfare and security associated with membership in or activity on behalf of a labor organization. Accordingly, the purpose of the order to offer reinstatement is not only

to restore the victim of discrimination to the position from which he was unlawfully excluded, but also, and more significantly, to dissipate the deeply coercive effects upon other employees who may desire self-organization, but have been discouraged therefrom by the threat to them implicit in the discrimination. This essential reassurance can be afforded—freedom can be reestablished—only by a demonstration that the Act carries sufficient force to restore to work anyone who has been penalized for exercising rights which the Act guarantees and protects; the acquisition of equivalent employment is no more relevant to this purpose than the acquisition of non-equivalent employment, or of no employment at all.

Further, it is a demonstrated fact of which we take notice that necessity almost inevitably compels a discharged employee to seek the best available other employment. If reinstatement were rendered inappropriate by reason of success in that search, the employer would be able, through elimination of union adherents, at once to impede or terminate exercise of the right of self-organization in his plant and at the same time to perpetuate his advantage by relying upon the victims' necessity of earning a livelihood elsewhere to assure their permanent riddance. This would afford a ready means for complete and final ouster of those prominent in the employees' efforts at self-organization.

> For the foregoing reasons, we conclude that the mere obtainment of substantially equivalent employment, and evidence pertaining thereto, is irrelevant to considerations decisive of the question whether reinstatement effectuates the policies of the Act. *These decisive considerations do not vary from case to case* (31 N. L. R. B. at 1099–1100). [Italics added.]

The Board has repeatedly reaffirmed this conclusion that in cases of discriminatory discharge a showing that the victim has received substantially equivalent employment does not render an offer of reinstatement inappropriate to effectuate the policies of the Act, and the courts have consistently enforced Board orders based upon this determination.[3]

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[3] See supplemental findings of fact and recommendations in *Matter of Phelps Dodge Corp.*, 35 N. L. R. B. 418, 419–421, adopted by Circuit Court of Appeals for the Second Circuit on November 3, 1941; supplemental findings of fact and recommendations in *Matter of Continental Oil Co.*, 35 N. L. R. B. 331, 332–334, adopted by Circuit Court of Appeals for the Tenth Circuit on November 13, 1941; *Matter of J. G. Boswell Co.*, 35 N. L. R. B. 968, 1025, 1028, enforced, 136 F. (2d) 585, 596–597 (C. C. A. 9); *Matter of Tyne Co.*, 35 N. L. R. B. 63, 76, enforced, 125 F. (2d) 832, 836 (C. C. A. 7); *Matter of Ohio Fuel Gas Co.*, 35 N. L. R. B. 1128, 1142, enforced (without opinion) December 17, 1942 (C. C. A. 6); *Matter of Veta Mines, Inc.*, 36 N. L. R. B. 288, 299; *Matter of American Cyanamid Co.*, 37 N. L. R. B. 578, 614; *Matter of Quality and Service Laundry, Inc.*, 39 N. L. R. B. 970, 986–987, enforced, 131 F. (2d) 182 (C. C. A. 4), certiorari denied, 318 U. S. 775; *Matter of Western Cartridge Co.*, 43 N. L. R. B. 179, 202, enforced, 138 F. (2d) 551, 553 (C. C. A.

The court below rejected petitioner's objection to this practice and concluded that: "The same reasons, whether they are good or bad, always exist whenever an employee is discharged for union activity, and it would be a barren formality to require their repetition in every case. Until the Supreme Court determines that more is necessary, we shall assume that the reasons for requiring reinstatement are always the same as were given, once and for all, in the *Ford* case, and that they need not be stated. They are that without the assurance that such offer will always be forthcoming, employees may hesitate fearlessly to exercise their rights, secured to them by the statute" (R. 288–289). It is submitted that the court below correctly refused to burden the administrative process by requiring the Board to go through the "barren formality" (R. 288) of restating in each case reasons which the Board itself stated "do not vary from case to

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2), certiorari denied, No. 657, this Term; *Matter of Virginia Electric and Power Co.*, 44 N. L. R. B. 404, 438, enforced, 132 F. (2d) 390 (C. C. A. 4), affirmed, 319 U. S. 533; *Matter of American Laundry Machinery Co.*, 45 N. L. R. B. 355, 355–356, 366, enforced, 138 F. (2d) 889 (C. C. A. 2); *Matter of Van Deusen*, 45 N. L. R. B. 679, 697–698, enforced, 138 F. (2d) 893, 895 (C. C. A. 2); *Matter of Richter's Bakery*, 46 N. L. R. B. 447, 481, 452, enforced, 140 F. (2d) 870 (C. C. A. 5), certiorari denied, No. 970, this Term; *Matter of Idaho Refining Co.*, 47 N. L. R. B. 1127, 1134; *Matter of Cape County Milling Co.*, 49 N. L. R. B. 226, 249, 226–227, enforced, 140 F. (2d) 543 (C. C. A. 8); *Matter of Weirton Steel Co.*, 32 N. L. R. B. 1145, 1263, enforced, 135 F. (2d) 494, 498 (C. C. A. 3).

case." (31 N. L. R. B. at 1100) Compare *Securities and Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80, 88, 93–95; *Helvering* v. *Gowran*, 302 U. S. 238, 245–246.

2. Petitioner contends (Pet. 5, 8–9, 22–23) that the Board's order is unauthorized by the Act insofar as it requires petitioner to post notices stating, without more, that its employees are free to become or remain members of the particular labor organization in which the Board found petitioner discouraged membership, and that petitioner will not discriminate against the employees because of membership or activity in that organization. This form of notice is normally ordered by the Board in cases such as the one at bar, and it is a proper exercise of the Board's discretionary power to determine "how the effect of prior unfair labor practices may be expunged." *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 82; *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 600; *Virginia Electric & Power Co.* v. *National Labor Relations Board*, 319 U. S. 533, 539–540. Indeed, an order that petitioner notify its employees that they are free to adhere to the particular labor organization against which petitioner's discriminatory conduct was directed is peculiarly "adapted to the situation which calls for redress." *National Labor Relations Board* v. *Mackay Radio & Tele-*

graph Co., 304 U. S. 333, 348. The same contention raised by petitioner was presented to this Court in *National Labor Relations Board* v. *Aintree Corp.*, 132 F. (2d) 469 (C. C. A. 7), certiorari denied, 318 U. S. 774; and *National Labor Relations Board* v. *Baltimore Transit Co.*, 140 F. (2d) 51 (C. C. A. 4), certiorari denied, No. 735, this Term. Petitioner's contention was rejected without discussion by the court below (see R. 289).

3. Petitioner asserts (Pet. 5, 9, 24–26) that the Board did not satisfy the requirements of Section 10 (c) of the Act because, after considering the entire record in the case, the Board adopted as its own those findings of fact and conclusions of law of its Trial Examiner with which it agreed, without restating such findings and conclusions (R. 252–276). The Board's opinion recited that it had considered the Intermediate Report of its Trial Examiner, petitioner's exceptions thereto, the latter's brief in support of its exceptions, and the entire record in the case (R. 253). The Board then stated that it "hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as noted below" (R. 253). The Board noted those findings, conclusions, and recommendations of the Trial Examiner with which it disagreed, set forth its Order, and appended the Intermediate Report (R. 253–276). This form of Board

decision has been recently used primarily to expedite the disposition of cases, in response to the increasing case load since the advent of the war.[4] It conforms to the recommendation of the Attorney General's Committee on Administrative Procedure that it would be desirable for the Board "in many cases to adopt as its own the trial examiner's findings and conclusions, subject, of course, to such alterations as might appear to be necessary in the light of the parties' arguments to the Board."[5]

The identical question raised by petitioner was recently presented to this Court by the employer in *National Labor Relations Board* v. *Jasper Chair Co.*, 138 F. (2d) 756 (C. C. A. 7), certiorari denied, No. 615, this Term. It presents no conflict of decisions or question of general importance. No circuit court of appeals has refused enforcement of a Board order on the ground urged herein by petitioner, or on any similar ground. Indeed, the *Jasper Chair* case is the only decision in which a court has even deemed the contention worthy of discussion. In the instant case the court below rejected this contention without comment (see R. 289):

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[4] *Sixth Annual Report of the National Labor Relations Board*, (Govt. Print. Off., 1942), pp. 1–4, 8–9; *Seventh Annual Report* (Govt. Print. Off., 1943), pp. 9–13.

[5] *Administrative Procedure in Government Agencies*, *Monograph of the Attorney General's Committee on Administrative Procedure* (Govt. Print. Off.), Part 5, pp. 22–29.

Petitioner also contends (Pet. 5, 9, 24–26) that the "form" of the Trial Examiner's findings of fact, referred to and adopted in part by the Board, does not conform to the requirements of Section 10 (c) because it is "a discursive statement of the evidence, pro and con, in narrative form." This "form" has been used regularly by the Board for years, and although early in the Board's history two circuit courts of appeals voiced objection to the form of the Board's findings,* no court has ever refused enforcement of a Board order on this or any related ground. Moreover, the form of the Board's findings is proper; it contains the evidence upon which the Board bases its conclusions as well as the Board's ultimate findings of fact. In any event, "no special form or style in which the findings shall be cast is prescribed in the Act or in the Board's rules." *National Labor Relations Board* v. *Jasper Chair Co.*, 138 F. (2d) 756, 758 (C. C. A. 7),

National Labor Relations Board v. *Remington Rand, Inc.*, 94 F. (2d) 862, 865 (C. C. A. 2), certiorari denied, 304 U. S. 576, 585 ("It is rather in the nature of a discursive opinion than of specific findings of fact, but it ends with certain conclusions of law followed by the order"); *National Labor Relations Board* v. *Thompson Products, Inc.*, 97 F. (2d) 13 (C. C. A. 6) (Judge Simons concurred in the result but refused to express any view upon the court's criticism of the form of the Board's findings).

It is worthy of note that the court below, which had decided the *Remington Rand* case, *supra*, rejected without comment petitioner's objection to the form of the Board's findings in the instant case.

certiorari denied, No. 615, this Term. Compare *Securities and Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80, 95.

4. Petitioner contends (Pet. 5–6, 10–12, 27–28) that the cease and desist provisions of the Board's order, which were sustained by the court below, are invalid in two respects, under the principles enunciated in *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426. In the instant case the Board found that petitioner interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (1), and discouraged membership in the Union by its discharge of Strackman for her union membership and activities, in violation of Section 8 (3) and (1) (R. 270–271, 253). In order to remedy these unfair labor practices the Board ordered petitioner, *inter alia*, to cease and desist from discouraging membership in labor organizations by discharging, refusing to reinstate, or in any manner discriminating in regard to hire, tenure of employment, or terms or conditions of employment of its employees and from in any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act (R. 255). In the *Express Publishing* case this Court recognized that "Having found the acts which constitute the unfair labor practice the Board is free to restrain

the practice and other like or related unlawful acts. * * * The breadth of the order * * * must depend upon the circumstances of each case, the purpose being to prevent violations, the threat of which in the future is indicated because of their similarity or relation to those unlawful acts which the Board has found to have been committed by the employer in the past" (312 U. S. at 436–437).

Petitioner contends, nevertheless, that (1) the cease and desist "in any other manner" provision of the Board's order and (2) the provision ordering petitioner to cease and desist from discouraging membership in labor organizations by discharging, refusing to reinstate or discriminating in regard to hire, tenure of employment or terms or conditions of employment of its employees, are invalid. Each contention is based upon an erroneous assumption. The first assumes (Pet. 10, 28) that the provision of the order which restrains petitioner from in any manner infringing the rights guaranteed to employees under Section 7 of the Act is based solely upon the fact that a violation of Section 8 (3) of the Act is also technically a violation of Section 8 (1). As noted above, however, the Board found independent violations of Section 8 (1) and (3) of the Act (R. 270–271, 253). In view of these findings, it is clear that the Board's order is valid under the rule of the *Express Pub-*

lishing case, 312 U. S. at 436–438. Since its decision in that case this Court has enforced provisions identical with the one here in question. *National Labor Relations Board* v. *Automotive Maintenance Machinery Co.*, 315 U. S. 282; *National Labor Relations Board* v. *Electric Vacuum Cleaner Co.*, 315 U. S. 685; *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105. Petitioner's second contention on this issue assumes (Pet. 5–6, 11–12, 27–28) that discouraging membership in labor organizations by refusing to reinstate or discriminating in regard to hire, tenure of employment, or terms or conditions of employment of its employees is totally unrelated to discouraging membership in a labor organization by a discharge for union membership and activities. On the contrary, however, the terms of the statute (Section 8 (3)) and the Congressional reports concerning it[7] make it abundantly clear that the forms of discrimination proscribed in the Board's order and the discriminatory discharge found by the Board are "like or related unlawful acts" which "the Board is free to restrain." *Express Publishing* case, 312 U. S. at 436. Contentions similar to that raised by petitioner were presented to the Court this Term by the employers in *Butler Bros.* v. *National Labor Relations Board*,

[7] H. Rep. No. 1147, 74th Cong., 1st Sess., p. 19; S. Rep. No. 573, 74th Cong., 1st Sess., p. 11.

134 F. (2d) 981 (C. C. A. 7), certiorari denied, No. 274, this Term; *National Labor Relations Board* v. *Jasper Chair Co.*, 138 F. (2d) 756 (C. C. A. 7), certiorari denied, No. 615, this Term; and *National Labor Relations Board* v. *Kaplan*, 138 F. (2d) 884 (C. C. A. 2), certiorari denied, No. 690, this Term.

Despite petitioner's assertions (Pet. 5, 11, 27), there is no conflict between the Second Circuit's decisions in *National Labor Relations Board* v. *Standard Oil Co.*, 138 F. (2d) 885 and *National Labor Relations Board* v. *Air Associates, Inc.*, 121 F. (2d) 586, 592, which it followed in the instant case (R. 289), and the *Express Publishing* case. In the *Air Associates* case, the court specifically pointed out that there were independent violations of Section 8 (1) and (3) of the Act, thereby distinguishing that case from the *Express Publishing* case; and the court enforced the broad cease and desist provisions of the Board's order (121 F. (2d) at 592). In the *Standard Oil* case there was a violation of Section 8 (2) of the Act, and the court properly upheld the broad cease and desist provision of the Board's order (138 F. (2d) at 888). See *Express Publishing* case, 312 U. S. at 436–438. Moreover, the court expressly stated in the *Standard Oil* case that "It would follow that to issue an injunction under Section 8 (1) the employer must have done something not specifically men

tioned in the other subdivisions of Section 8" (138 F. (2d) at 888).[8] The instant case comes squarely within that rule. Petitioner's contention that there is a conflict between the *Standard Oil* and *Air Associates* cases and the *Express Publishing* case was recently presented to this Court by the employer in *National Labor Relations Board* v. *Kaplan*, 138 F. (2d) 884 (C. C. A. 2), certiorari denied, No. 690, this Term.

5. Petitioner contends (Pet. 6, 12–13, 28–29) that the Board abused its discretion in directing its order against petitioner and "its officers, agents, successors, and assigns."[9] As this Court has noted:[10] "This is the usual form of order,

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[8] Although a comparison of the majority and concurring opinions of the court in the *Standard Oil* case seems to reveal a conflict within the Circuit Court of Appeals for the Second Circuit concerning the propriety of the broad cease and desist provision in cases where no independent violation of Section 8 (1) is found, that issue is not presented in the instant case. In any event, there is no difference of opinion among that court concerning the propriety of the broad cease and desist provision when there is an independent violation of Section 8 (1). We have discussed this issue in more detail in our brief in opposition to the petition for a writ of certiorari in *National Labor Relations Board* v. *Kaplan*, 138 F. (2d) 884 (C. C. A. 2), certiorari denied, No. 690, this Term, to which we respectfully refer the Court.

[9] As we note below, pp. 23–25, petitioner also advances the inconsistent contention (Pet. 12–13, 28–29) that the interpretation of this phrase by the court below has restricted it unduly and is in conflict with a broader interpretation of the phrase by this Court.

[10] *Southport Petroleum Co.* v. *National Labor Relations Board*, 315 U. S. 100, 106–107, note 6.

and has frequently been employed in cases where this Court has sustained Board orders." It clearly was not an abuse of the Board's discretion to direct its order against the officers, agents, successors, and assigns of a continuing commercial enterprise which has interfered with, restrained, coerced, and discriminated against its employees in violation of the Act. *Southport Petroleum Co.* v. *National Labor Relations Board*, 315 U. S. 100, 106–107; see also cases cited *infra*, note 12.

While, as petitioner notes (Pet. 12, 28), the circuit court of appeals for the Seventh Circuit has held that an order should not be directed against the employer's "successors and assigns" in the absence of special circumstances,[11] no other circuit court of appeals has followed this line of decisions. On the contrary, the circuit courts of appeals for the First, Second, Third, Fourth, and Sixth Circuits and the Court of Appeals for the District of Columbia have expressly upheld the Board's authority to issue such an order,[12]

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[11] E. g. *National Labor Relations Board* v. *Bachelder*, 125 F. (2d) 387, 388; *National Labor Relations Board* v. *Stone*, 125 F. (2d) 752, 757, certiorari denied (employer's petition), 317 U. S. 649; *Butler Bros.* v. *National Labor Relations Board*, 134 F. (2d) 981, 985, certiorari denied (employers' petitions), Nos. 274, 380, this Term; *Polish National Alliance* v. *National Labor Relations Board*, 136 F. (2d) 175, 181, affirmed on another point, No. 226, this Term.

[12] *Bethlehem Shipbuilding Corp., Ltd.* v. *National Labor Relations Board*, 114 F. (2d) 930, 933 (C. C. A. 1); *National Labor Relations Board* v. *Blackstone Manufacturing Co., Inc.*, 123 F. (2d) 633, 635 (C. C. A. 2); *National Labor Rela-*

and the Fifth, Eighth, Ninth, and Tenth Circuits have consistently enforced such orders without comment.[13] Even if the instant decision may be regarded as conflicting with decisions of the Seventh Circuit on this issue, this would not appear to raise a question of sufficient importance to warrant the granting of a writ of certiorari. At present, only the Seventh Circuit modifies Board orders by the deletion of "successors and assigns," so this question has not raised administrative difficulties requiring review by this Court; on the

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tions Board v. *Weirton Steel Co.*, 135 F. (2d) 494, 498–499 (C. C. A. 3); *National Labor Relations Board* v. *Jac. Feinberg Hosiery Mill, Inc.*, 134 F. (2d) 620 (C. C. A. 4); *National Labor Relations Board* v. *Colten*, 105 F. (2d) 179, 183 (C. C. A. 6); *Bethlehem Steel Co.* v. *National Labor Relations Board*, 120 F. (2d) 641, 650–651 (App. D. C.); but see *National Labor Relations Board* v. *Cleveland-Cliffs Iron Co.*, 133 F. (2d) 295, 302 (C. C. A. 6).

[13] E. g. *National Labor Relations Board* v. *Southport Petroleum Co.*, 117 F. (2d) 90 (C. C. A. 5), affirmed, 315 U. S. 100, 106–107; *Humble Oil & Refining Co.* v. *National Labor Relations Board*, 140 F. (2d) 777 (C. C. A. 5), enforcing 48 N. L. R. B. 1118, 1120–1121; *National Labor Relations Board* v. *Glenn L. Martin-Nebraska Co.*, decided April 5, 1944 (C. C. A. 8), enforcing 48 N. L. R. B. 587, 593–594; *Elastic Stop Nut Corp.* v. *National Labor Relations Board*, decided May 1, 1944 (C. C. A. 8), enforcing 51 N. L. R. B. 694, 703–704; *National Labor Relations Board* v. *Thompson Products, Inc.*, decided March 24, 1944 (C. C. A. 9), enforcing 46 N. L. R. B. 514, 515–516; *National Labor Relations Board* v. *Ellis-Klatscher & Co.*, decided April 25, 1944 (C. C. A. 9), enforcing 40 N. L. R. B. 1037, 1056–1057; *Utah Copper Co.* v. *National Labor Relations Board*, 139 F. (2d) 788 (C. C. A. 10), enforcing 47 N. L. R. B. 757, 759–760, certiorari denied, No. 802, this Term; *National Labor Relations Board* v. *Stremel*, 141 F. (2d) 317 (C. C. A. 10), enforcing 48 N. L. R. B. 660, 662–663.

other hand, petitioner makes no showing that the Board's order is improper in the case at bar. The fear expressed by petitioner (Pet. 29) concerning the effect of this phrase is not well founded in view of the lower court's interpretation of it (R. 289). *National Labor Relations Board* v. *Blackstone Manufacturing Co., Inc.*, 123 F. (2d) 633, 635 (C. C. A. 2). Contrary to petitioner's contention (Pet. 12–13, 28–29), there is no conflict between the *Blackstone* case and this Court's decision in the *Southport Petroleum* case. In any event, the question whether the Second Circuit might—in accordance with its interpretation of this phrase in the *Blackstone* case (123 F. (2d) at 635)—unduly restrict the scope of the phrase in a contempt proceeding is not now before the Court. Indeed, petitioner would not be injured by such a restrictive interpretation and, not being directly affected, probably could not raise the issue. Cf. *Blackstone* case, 123 F. (2d) at 635.

6. Petitioner's contention (Pet. 6, 13, 29–30) that the Board's findings of unfair labor practices are not supported by substantial evidence is based upon its assertion that "Strackman's testimony was subject to more than ordinary self-contradiction" and that her "version of the facts" was "false."[14] The Board's determination that

[14] Petitioner attacks only obliquely (Pet. 26, 28) the Board's finding of a violation of Section 8 (1) of the Act. This finding (R. 270–271, 253) is clearly supported by the evidence summarized in the Statement, *supra*, pp. 4–6.

Strackman's testimony is credible[15] is clearly proper. *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 597. The court below concluded that: "We assume for argument that testimony may be, upon the mere reading, so unconvincing as not to support a finding, but Strackman's testimony was very far from that; we find in it no more confusion as to details than is not uncommon in the stories of entirely honest and reliable witnesses" (R. 287–288). Petitioner's contention presents no question of general importance. It was properly rejected by the court below.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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JUNE 1944.

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[15] The Board adopted (R. 253) the Trial Examiner's finding that "Strackman was a credible witness" (R. 221) whose testimony "reflects the true facts" (R. 226).

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., 151 *et seq.*) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> * * * * *
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *.
>
> * * * * *
>
> SEC. 10. * * *
>
> (c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

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No. 86

In the Supreme Court of the United States

OCTOBER TERM, 1944

REGAL KNITWEAR CO., INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 86

REGAL KNITWEAR CO., INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. 287–289) is reported in 140 F. (2d) 746. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 252–276) are reported in 49 N. L. R. B. 560.

JURISDICTION

The decree of the court below (R. 290–291) was entered on March 3, 1944. The petition for a writ of certiorari was filed on May 15, 1944, and was granted on October 9, 1944, limited to the sixth question presented in the petition (R. 292). The

jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and upon Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

Whether, in the exercise of its administrative discretion to prevent and remedy unfair labor practices, the Board may properly direct its orders not only against the employer but also against his "successors and assigns".

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix, *infra*, pp. 36–37.

STATEMENT

Upon the usual proceedings the Board, on May 7, 1943, issued its findings of fact, conclusions of law, and order (R. 252–276). The Board found that petitioner, a New York corporation, had discriminatorily discharged an employee because of her membership and activities in behalf of a labor organization, and had otherwise, interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed by the National Labor Relations Act, thereby engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act (R. 253–255, 260–271). Its order followed the usual form, directing petitioner, "its officers, agents, successors, and

assigns" to cease and desist from engaging in the unfair labor practices found, to reinstate the discharged employee and make her whole with back pay, and to post appropriate notices (R. 255–256).

Thereafter the Board filed a petition for enforcement in the Circuit Court of Appeals for the Second Circuit (R. 284–287). On February 15, 1944, the court in a *per curiam* opinion upheld the Board's order (R. 287–289), and on March 3, 1944, entered its decree enforcing the order, including the provision here in question (R. 290–291).

SUMMARY OF ARGUMENT

The Board's practice of directing its orders against the successors and assigns of an employer, as well as against the employer, is a sound exercise of the board administrative discretion vested in the Board by the National Labor Relations Act. The Board has consistently followed this practice since 1937. This Court and all of the Circuit Courts of Appeals except that for the Seventh Circuit have regularly enforced this provision. Other administrative agencies which have employed a similar form of order include the Federal Trade Commission, the Bituminuous Coal Division of the Department of the Interior, the Securities and Exchange Commission, and various state labor relations boards.

Although there are numerous ways in which the legal ownership of a business may be changed, the question of the scope of the "successors and assigns" provision may arise in three types of situations: (1) the *bad faith successor or assign*, (2) the *alter ego*, and (3) the *good faith successor or assign*, who takes over and operates a continuing business. The binding effect of Board orders on those successors and assigns who fall into the first two categories is clear. Such successors and assigns are bound even in the absence of an order explicitly directed against them. As to such persons, inclusion of the "successors and assigns" provision is a reasonable exercise of the Board's discretion, not only because of the salutary effect that may be exercised upon the employees, the offending employer, and anyone who might be inclined to connive with him in avoiding compliance with Board orders, but also because of the obvious desirability of making administrative orders as explicit as the circumstances permit.

It is the Board's position that good-faith successors and assigns, or new owners of a continuing business, may also be properly bound by Board orders. The Board believes that effectuation of the policies of the Act requires one who takes over a continuing business and operates it in the place of an employer found by the Board to have engaged in unfair labor practices should also be

bound by the order from and after the date he has notice of such order. In a continuing business, the group relationship of employees and supervisory personnel does not change by mere shifts in ownership. To eradicate the effects of unfair labor practices employees must be assured that supervisors who once were part of an anti-union organization are no longer free to continue anti-union conduct. They must be assured that members of their group who lost their employment because of union activity may resume their place in the group, without having suffered any loss in pay. They must be assured that company-sponsored labor organizations cannot be recognized by the new owners. They must be assured that the new employer cannot benefit from the former owner's refusals to bargain.

The Board's authority to bind successors and assigns in the last category as well as in the first two is implicit in the broad administrative powers vested by Congress in the Board to prevent and remedy unfair labor practices. Its authority arises out of the necessity of bringing the employing industry "within the corrective and remedial provisions of the Act in the interest of industrial peace" (*National Labor Relations Board* v. *Colten*, 105 F. (2d) 179, 183 (C. C. A. 6)), thereby vindicating the public policy which the Act was designed to effectuate.

ARGUMENT

IN EXERCISING ITS ADMINISTRATIVE DISCRETION TO PREVENT AND REMEDY UNFAIR LABOR PRACTICES, THE BOARD MAY PROPERLY DIRECT ITS ORDERS NOT ONLY AGAINST THE EMPLOYER BUT ALSO AGAINST HIS "SUCCESSORS AND ASSIGNS"

Upon finding that an employer has engaged in unfair labor practices affecting commerce, the Board normally orders the employer, "its officers, agents, successors, and assigns" to cease and desist from such practices and to take certain affirmative action which the Board finds will effectuate the policies of the Act. The Board has consistently followed this practice since its decision in *Matter of Hill Bus Company, Inc.*, 2 N. L. R. B. 781, decided May 3, 1937. The "successors and assigns" provision is included in the orders as a matter of course, and not necessarily because of any threat or other evidence in the record which might indicate that a successorship or an assignment is imminent. And so, in the present case, although the employer did not in any way indicate prior to the issuance of the Board's order (and, indeed, has not yet indicated) that any change in the ownership or operation of its business was contemplated, the Board nevertheless directed its order against petitioner's successors and assigns as well as against petitioner and its officers and agents (R. 255).

The Federal Trade Commission, long prior to the enactment of the National Labor Relations

Act, had issued orders containing similar provisions.[1] The Bituminous Coal Division of the Department of the Interior does not limit its cease and desist orders to the parties to its proceedings.[2] The Securities and Exchange Commission also has upon occasion obtained injunctions against successors and assigns and other persons incapable of being specifically named.[3]

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[1] See *e. g.*, *Matter of Superior Woolen Mills*, 8 F. T. C. 283, 288, decided December 8, 1924, in which the Commission directed its order against the party to the proceeding, "its successors, officers, directors, agents, servants and employees"; *Matter of American Snuff Co.*, 11 F. T. C. 144, 160, decided June 30, 1927, in which the Commission directed its order against the specific party to the proceeding and "its officers, agents, representatives, servants, employees, and successors"; *Matter of National Numbering Machine Co., Inc.*, 30 F. T. C. 139, 144, decided December 19, 1939, in which the Commission directed its order against the party to the proceeding "and its successors, together with its respective officers, directors, representatives, agents, and employees"; and *Matter of The Sherwin Williams Co., et al.*, 36 F. T. C. 25, 72, 74, decided January 8, 1943, in which the Commission directed its order against each of the parties to the proceeding, "its successors and assigns and its officers, directors, agents, and employees."

[2] See *e. g.*, *Matter of Cove Hill Coal Co.*, 7 F. R. 7572, 7574, decided September 22, 1942, wherein the order is directed against the defendant "its representatives, servants, agents, officers, employees, attorneys, receivers and successors or assigns and all persons acting or claiming to act on its behalf or in its interest"; and *Matter of Waltrip & Sons*, 7 F. R. 7864, decided September 30, 1942, in which an order was issued against named persons, "their representatives, agents, servants, employees, attorneys, successors, and assigns and all persons acting or claiming to act in their interest."

[3] See *e. g.*, *Securities and Exchange Commission* v. *Aldrich Blake, Inc.*, 1 S. E. C. Jud. Dec. 19, 21 (unreported) in which

Likewise the State Labor Relations Boards and Commissions customarily broaden the scope of their orders to cover future changes in ownership or operation of the businesses regulated [4] and courts of equity have not infrequently incorporated similar provisions in their decrees, particularly in antitrust suits.[5]

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an injunction was issued against the parties defendant, "their several agents, servants, representatives, employees, successors and assigns, and all persons acting by, through or under them, or any of them, or by or through their order"; and *Securities and Exchange Commission* v. *Foundation Plan, Inc.*, 31 F. Supp. 331, 340 (S. D. N. Y.), 1 S. E. C. Jud. Dec. 857, 870, in which an injunction was issued against the defendants, "their agents, servants, representatives and employees, and all others acting by or under their direction or authority, and all other persons in concert or participating with them."

[4] See *e. g.*, *Matter of Samuel Cohn d/b/a Atlantic Carriage Stores*, Case No. SE–8233 decided March 13, 1943, by the Massachusetts Labor Relations Commission, in which the order was directed against the respondent, "his agents, distributees, administrators, executors, successors, and assigns"; *Matter of The Great Atlantic and Pacific Tea Company*, Case No. CU–333 decided January 7, 1944, by the New York State Labor Relations Board, in which the order was directed against "respondent, its officers, agents successors, and assigns"; *Matter of W. T. Grant Company, Inc.*, Case No. 82, decided March 28, 1938, by The Pennsylvania Labor Relations Board, in which the order was directed against respondent, "its officers, agents, successors, and assigns"; *Matter of E. G. Shinner and Co., Inc.*, Case No. 668, decided August 24, 1938, by the Wisconsin Labor Relations Board, in which the order was directed against respondent, "its officers, agents, successors, and assigns."

[5] See *Warner and Co.* v. *Eli Lilly and Co.*, 265 U. S. 526, 532; *Aluminum Colors, Incorporated* v. *The Empire Plating Co.*, 5 F. Supp. 687 (N. D. Ohio 1933); *Sidway* v. *Missouri*

This Court and all of the Circuit Courts of Appeals except that for the Seventh Circuit have regularly enforced Board orders, otherwise proper, directed against the employer's successors and assigns. As this Court observed in *Southport Co.* v. *National Labor Relations Board*, 315 U. S. 100, 106, note 6, "This is the usual form of order, and has frequently been employed in cases where this Court has sustained Board orders." [6] Except for the Circuit Court of Appeals for the Seventh Circuit, every court which has expressly considered the point, including the Circuit Courts of Appeals for the First, Second, Third, Fourth, and Eighth Circuits and the Court of Appeals for the District of Columbia, has upheld the authority of the Board to in-

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Land & Livestock Co., 116 Fed. 381, 390 (Cir. Ct. S. D. Mo.); *Sebrone Co.* v. *Federal Trade Commission*, 135 F. (2d) 676 (C. C. A. 7); *United Gilpin Corp.* v. *Wilmore*, 100 Colo. 453, 456, 68 P. (2d) 34, 36; *United States* v. *Great Lakes Towing Co.*, 1 Decrees and Judgments in Federal Antitrust Cases, 253–254 (N. D. Ohio, 1915); *United States* v. *The Pullman Co.* (Civil Action No. 994, E. D. Pa., 1944); *United States* v. *Vehicular Parking, Ltd.* (Civil Action No. 259, D. Del., 1944).

[6] In the *Southport* case, *supra*, the alleged transfer of the business had occurred subsequently to the Board order but prior to the court's decree of enforcement. In discussing the operation of the decree, the Board's brief was directed mainly to a discussion of the obligations of the Southport Petroleum Company, but reference was also made to the obligations of any successor or assign, including a new owner taking in good faith. See Board brief in No. 67, October Term, 1941, pp. 22, 25–27, 28, 29.

clude such a provision.[7] In several of these cases there was a threatened, alleged, or proven change in ownership or operation of the employer's business;[8] in other cases there were no such special circumstances.[9] Except for one case involving unusual circumstances decided by the Circuit Court of Appeals for the Sixth Circuit,[10] only

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[7] *National Labor Relations Board* v. *Brezner Tanning Co., Inc.*, 141 F. (2d) 62, 65 (C. C. A. 1); *National Labor Relations Board* v. *Blackstone Manufacturing Co., Inc.*, 123 F. (2d) 633, 635 (C. C. A. 2); *National Labor Relations Board* v. *Weirton Steel Co.*, 135 F. (2d) 494, 498–499 (C. C. A. 3); *Union Drawn Steel Co.* v. *National Labor Relations Board*, 109 F. (2d) 587, 594–595 (C. C. A. 3); *National Labor Relations Board* v. *Landis Tool Company*, 15 L. R. R. 718 (C. C. A. 3); *National Labor Relations Board* v. *Jac. Feinberg Hosiery Mill, Inc.*, 134 F. (2d) 620 (C. C. A. 4); *National Labor Relations Board* v. *Gluck Brewing Co.*, 14 L. R. R. 791 (C. C. A. 8); *Bethlehem Steel Co.* v. *National Labor Relations Board*, 120 F. (2d) 641, 650–651 (App. D. C.).

[8] *National Labor Relations Board* v. *Blackstone Manufacturing Co., Inc.*, 123 F. (2d) 633 (C. C. A. 2); *Union Drawn Steel Co.* v. *National Labor Relations Board*, 109 F. (2d) 587 (C. C. A. 3); *National Labor Relations Board* v. *Weirton Steel Co.*, 135 F. (2d) 494 (C. C. A. 3).

[9] *National Labor Relations Board* v. *Brezner Tanning Co., Inc.*, 141 F. (2d) 62 (C. C. A. 1); *National Labor Relations Board* v. *Landis Tool Company*, 15 L. R. R. 182 (C. C. A. 3); *National Labor Relations Board* v. *Jac. Feinberg Hosiery Mill, Inc.*, 134 F. (2d) 620 (C. C. A. 4); *National Labor Relations Board* v. *Gluck Brewing Co.*, 14 L. R. R. 791 (C. C. A. 8); *Bethlehem Steel Co.* v. *National Labor Relations Board*, 120 F. (2d) 641 (App. D. C.).

[10] In *National Labor Relations Board* v. *Cleveland-Cliffs Iron Co.*, 133 F. (2d) 295 (C. C. A. 6), the words were eliminated in a case involving discriminatorily discharged em-

the Circuit Court of Appeals for the Seventh Circuit has refused to enforce this provision."

The scope and validity of the provision

The meaning of the "successors and assigns" provision can be ascertained, of course, only by its application to particular factual situations. The Board has not undertaken to anticipate every possible set of circumstances which may arise, and to define in advance the extent to which the provision would impose obligations upon persons standing in the relation of "successors and assigns" to the employer. In this respect the Board has regarded the nature of the problem to be such that the lines of demarcation must be "pricked out by the gradual approach and contact of decisions on the opposing sides." (*Noble State Bank* v. *Haskell*, 219 U. S. 104, 112.) We shall consider later the question of the scope of the decree of enforcement entered in the case at bar, with particular reference to the construction given the

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ployees where the offending employer, prior to the hearing before the Board, had discontinued its business and had not resumed operations or sold its property at the time of the enforcement decree. The court held that the words in question might make it difficult or impossible for the employer to transfer its property to an independent *bona fide* purchaser.

[11] See *e. g.*, *National Labor Relations Board* v. *Bachelder*, 125 F. (2d) 387, 388 (C. C. A. 7); *National Labor Relations Board* v. *Stone*, 125 F. (2d) 752, 757 (C. C. A. 7) certiorari denied (employer's petition), 317 U. S. 649.

"successors and assigns" provision by the court below. At this point, however, we believe it will be helpful to discuss, in a general way, the nature and purposes of the provision, its application to varying factual situations, and its validity as thus applied.

Changes in the legal ownership of a business may occur in many ways. They may be involuntary, such as by death or involuntary bankruptcy or reorganization, or voluntary, such as by dissolution, amalgamation, merger, reorganization, sale, or otherwise. In some cases, the change may be related to a purpose to avoid compliance with the Act or with the Board's order or a decree of enforcement; in other cases, the change may be wholly unrelated to such a purpose. In general, however, the question of the applicability of the "successors and assigns" provision may arise in three classes of cases: (1) the *bad faith successor and assign*—where the employer for the purpose of avoiding compliance with the Board's order, by some form of transfer or reorganization, seeks to operate his business through a disguise or straw man; (2) the *alter ego*—where an employer for legitimate business reasons, such as seeking to reduce tax liability, reorganizes or forms a new corporation and continues or resumes the operation of his business through the same persons who operated it before the change; or where after death, bankruptcy, or receivership, the business

is continued by an executor, administrator, or other legal representative of the original employer; and (3) the *good faith successor and assign*—where the employer sells his business as a going concern to another, who, with or without knowledge of the Board's order, continues to operate the business without having any connection with the old employer.

(*1*) *and* (*2*). The Board's orders are unquestionably binding upon successors and assigns who operate as "merely a disguised continuance of the old employer" (*Southport Co.* v. *National Labor Relations Board*, 315 U. S. 100, 106) or as an *alter ego* of the offending employer. As to this aspect of the "successors and assigns" provision, there can be no doubt of the propriety of its inclusion in a Board order. An order of the Board is in the nature of an injunction, its cease and desist provisions restraining the performance of certain acts and its affirmative provisions making mandatory the performance of other acts. *National Labor Relations Board* v. *Colten*, 105 F. (2d) 179, 183 (C. C. A. 6); *National Labor Relations Board* v. *Bachelder*, 125 F. (2d) 387, 388 (C. C. A. 7). "An injunctive decree may bind not only the parties defendant but also those who are represented by them or are subject to their control or in privity with them." *Inter-*

national Brotherhood v. *Keystone Freight Lines*, 123 F. (2d) 326, 329 (C. C. A. 10); *In re Lennon*, 166 U. S. 548; compare 38 Stat. 738, 28 U. S. C. 383. Similarly, Board orders may bind persons who have not been named as parties to the proceeding if they have notice of such proceedings. Cf. *Bethlehem Steel Co.* v. *National Labor Relations Board*, 120 F. (2d) 641, 651 (App. D. C.). As Judge Learned Hand, speaking for the Circuit Court of Appeals for the Second Circuit, has said, "There can be no doubt that this is the law; equity has always treated as contumacious those who take an actual part in the defendant's own violation of its injunction, provided they have notice of the decree * * *." *National Labor Relations Board* v. *Blackstone Mfg. Co.*, 123 F. (2d) 633, 635 (C. C. A. 2).

Clearly, therefore, one who acts in privity with or connives with an offending employer in order to avoid compliance with a Board order may be held with the employer in contempt of the court's decree enforcing the order. *National Labor Relations Board* v. *Hopwood Retinning Co.*, 104 F. (2d) 302 (C. C. A. 2). And, if there has been merely a change in name or in apparent, but not actual, control of the employer, the Board's order is enforceable against the disguised employer or *alter ego* even though it may be operating as a distinct legal entity. *Southport Co.* v. *National Labor Relations Board*, 315 U. S. 100,

106. Indeed, "it could be only the blindness of formalism that would suggest separately instituted proceedings against the predecessor and the successor." *National Labor Relations Board* v. *Baldwin Locomotive Works*, 128 F. (2d) 39, 43 (C. C. A. 3); *Bethlehem Steel Co.* v. *National Labor Relations Board*, 120 F. (2d) 641, 650–651 (App. D. C.); cf. *Bethlehem Shipbuilding Corp.* v. *National Labor Relations Board*, 114 F. (2d) 930, 933, 942 (C. C. A. 1); *Union Drawn Steel Co.* v. *National Labor Relations Board*, 109 F. (2d) 587 (C. C. A. 3); *DeBardeleben* v. *National Labor Relations Board*, 135 F. (2d) 13 (C. C. A. 5); *National Labor Relations Board* v. *Adel Clay Products Co.*, 134 F. (2d) 342 (C. C. A. 8); *G. & C. Merriam Co.* v. *Saalfield*, 190 Fed. 927 (C. C. A. 6). And the Circuit Court of Appeals for the Seventh Circuit, which regularly eliminates from Board orders the provision relating to successors and assigns, recognizes that successors or assigns in the two categories discussed above are bound by the Board's order. *National Labor Relations Board* v. *Bachelder*, 125 F. (2d) 387, 388 (C. C. A. 7).

The latter court has apparently taken the position, however, that only bad faith successors and assigns or those who operate as an *alter ego* of the offending employer can be bound by orders of the Board, and that they would be so bound even if no express reference to them were made

in such orders. The court reasons, therefore, that the words "successors and assigns" are inserted in Board orders only for the purpose of binding good faith successors and assigns who would not otherwise be bound, and that the Board lacks authority to make its orders run against such persons. See *National Labor Relations Board* v. *Bachelder*, *supra*. But by the same process of reasoning, it would appear that the Circuit Court of Appeals for the Seventh Circuit should also eliminate the words "officers" and "agents" from Board orders. There can be no question as to the liability of officers of a corporate employer for engaging in conduct from which the corporation is enjoined even in the absence of their express inclusion in the order, for "a command to the corporation is in effect a command to those who are officially responsible for the conduct of its affairs." *Wilson* v. *United States*, 221 U. S. 361, 376; *Federal Trade Commission* v. *Education Society*, 302 U. S. 112, 119. For like reasons an agent is bound by the order against his principal although he is not expressly named in the order. *Hart Steel Co.* v. *Railroad Supply Co.*, 244 U. S. 294; *Sidway* v. *Missouri Land & Livestock Co.*, 116 Fed. 381, 390 (Cir. Ct. S. D. Mo.). Thus, it might be argued that the express inclusion of "officers" and "agents" implies a purpose to extend liability to some class of officers and agents who could not properly be bound. Clearly, this would be untenable.

We submit that with respect to "successors and assigns" within categories (1) and (2), as to whom the Board's orders unquestionably are binding, inclusion of the provision in its orders is a proper exercise of the Board's discretion. That "the provision merely makes explicit as to them that which the law already implies" (*Chase National Bank* v. *Norwalk*, 291 U. S. 431, 436–437) is no reason for striking it from decrees of *enforcement*. As *in other fields of the law*, the progress of administrative law has been towards more rather than less explicitness in the formulation of rules of conduct. Compare *J. I. Case Co.* v. *Labor Board*, 321 U. S. 332; Report of the Attorney General's Committee on Administrative Procedure (S. Doc 8, 77th Cong., 1st Sess. pp. 102–103). It is desirable that interested persons should be made aware of the scope of administrative orders. In addition, there are special reasons for making explicit in Board orders that they also run against any "disguised continuance" or *alter ego* of the offending employer. The provision may have the effect of reassuring employees who have been subjected to unfair labor practices and who, consequently, may fear a continuation of such unfair labor practices or an attempt by their employer to avoid remedying the unfair labor practices; the provision may also help such employees to pursue their rights to self-organization with confidence and without fear of recriminations.

(3) We consider next the applicability of the "successors and assigns" provision to situations in which there has been a *bona fide*, complete change of ownership, and where the new ownership is in no sense a continuance of the old. Although there is some authority that even in the absence of a reference to successors and assigns in an administrative order, the order may be enforced against a good faith successor and assign who has notice of the order,[12] we shall assume, as was indicated in the *Southport* case, 315 U. S. at 106–107, that the "successors and assigns" provision in Board orders will in such cases "be the basis—and the indispensable basis—of liability"

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[12] See *I. C. C.* v. *Western N. Y. and P. R. Co.*, 82 Fed. 192, 194 (Cir. Ct. W. D. Pa. 1897), where subsequent to the issuance of an order against certain railroad companies, their ownership, operation, and control were transferred and where the successors were joined with the original owners in a petition for enforcement of an order of the Interstate Commerce Commission. The Circuit Court in enforcing the order against the successors stated: "It would indeed be lamentable if a lawful order against unjust discrimination by a railroad company, made by the interstate commerce commission after a protracted investigation, could be nullified by the subsequent reorganization of the company, or transfer of its railroad and franchises to another corporation. * * * This proceeding is for the enforcement of a public duty which is inseparable from the ownership of the railroad. No injustice is done to these new companies by joining them as defendants here, for they are entitled to be heard against the enforcement of the order of the commission, and the court is to proceed and determine 'in such manner as to do justice in the premises.'"

on the part of persons who take over the operation of a business.

The precise scope of the provision as applied to this type of situation will depend, we believe, upon the particular facts of cases arising either before the Board or, upon application by the Board, in contempt proceedings before a Circuit Court of Appeals. The factual issues to be determined in particular cases would cover a broad range, including, for example, whether the good faith successor or assign has taken over the same "business" (entailing an inquiry as to the character of the operations and the identity of the supervisory and operating personnel), the nature of the unfair labor practice, the extent to which the Board order or court decree has been complied with at the date of the transfer, the date of the transfer in relation to the Board order, the successor or assign's knowledge of the Board proceeding at the date of the transfer, and, where he pleads lack of knowledge, the reasons advanced for such ignorance. It would be impracticable, if not impossible, to attempt to envisage every possible set of circumstances which may arise, and to determine in advance the obligations of the persons involved. For present purposes, however, the Board's position may be stated as follows: one who takes over a continuing business and operates it in the place of an employer found by the Board to have engaged in unfair labor

practices is bound by the order from and after the date he has notice or knowledge of such order.[13]

Congress declared in Section 1 of the Act that it is the policy of the United States to foster and protect "the right of employees to organize" and the "practice and procedure of collective bargaining." It vested in the Board to duty to carry out this policy and empowered it "to prevent any

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[13] Questions may arise as to the liability of a "successor" or "assign" where at the time of the transfer of the business the Board case has not proceeded to a final order. It is most unlikely that any such question would arise where the transfer occurred prior to the hearing before the trial examiner at which the evidence is adduced, because the fact of the transfer in this situation would be developed at the hearing and the Board order could then be framed, not solely in terms of successors and assigns, but with specific reference to the parties involved in the transfer. Compare *Matter of South Carolina Granite Company*, decided by the Board October 28, 1944, 15 L. R. R. 346. As to a transfer subsequent to a hearing before the trial examiner, the same rule would seem to apply as in the case of a transfer after the Board order. However, the present case involves no question of a transfer prior either to Board order or court decree.

The problem of a transfer made without notice or knowledge on the part of the transferee of the Board proceeding or court decree is also one most unlikely to arise and, so far as the Board is aware, has never occurred. The purchaser of a going business would, in the course of his investigation prior to purchase, in all probability become aware of any pending or completed litigation arising out of labor difficulties. Certainly the petitioner here is in no position to complain in behalf of a presently unknown successor or assign without notice, since petitioner would be fully able, if not indeed affirmatively obliged, to inform any prospective successor or assign of the present proceedings.

person from engaging in any unfair labor practice * * * affecting commerce" (Section 10 (a)). It provided that the Board might issue orders requiring any person found to have engaged in unfair labor practices to cease and desist from such practices and to take such affirmative action "as will effectuate the policies of the Act" (Section 10 (c)). "* * * When Congress wants to give wide discretion it uses broad language * * * The 'policies' of the Act were so broadly defined by Congress that the determination of 'the relation of remedy to policy is peculiarly a matter for administrative competence.' *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 194." *Addison* v. *Holly Hill Fruit Products, Inc.*, 322 U. S. 607, 616.

We believe that there is implicit in the broad administrative powers vested by Congress in the Board the authority not only to make such orders as are reasonably necessary to carry out the policies of the Act but to direct such orders to such persons as may be necessary in order to make its orders fully effective. It would seem, further, that the guarantee to employees of full freedom of association for the purpose of collective bargaining or other mutual aid and protection (Section 1 of the Act) could be frustrated if a mere change in the ownership of a continuing business had the effect of depriving injured employees of the remedial benefits provided under the Act.

As this Court stated in *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, 364, "The Board asserts a public right vested in it as a public body, charged in the public interest with the duty of preventing unfair labor practices."[14] It is important, therefore, that Board orders, like orders enjoining violations of the Fair Labor Standards Act (52 Stat. 1060, 29 U. S. C. Sec. 201, *et seq.*), should "in appropriate circumstances be enforced against those to whom the business may have been transferred, whether as a means of evading the judgment or for other reasons." *Walling* v. *Reuter*, 321 U. S. 671, 674. This is the view expressed by the Circuit Court of Appeals for the Third Circuit in *National Labor Relations Board* v. *Weirton Steel Co.*, 135 F. (2d) 494. In that case the respondent, in its answer to the Board's petition for enforcement, alleged that it had, subsequent to the Board's order, dissolved and ceased to exist except for the purposes of prosecuting and defending suits and urged that the court's decree should not run against its successors and assigns. The court, in rejecting this latter contention, stated at pp. 498–499:

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[14] To like effect see, *J. I. Case Co.* v. *National Labor Relations Board*, 321 U. S. 332, 337; *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, 552; *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 193; *Walling* v. *Reuter Co.*, 321 U. S. 671, 674–675.

> * * * we see good reason under the circumstances why the order should, as is customary, run against the Company's successors and assigns. It is not suggested that the property has been liquidated or that the business does not continue as an operating unit. Under these circumstances the Board may well find that it will effectuate the policies of the Act for the new owners of a continuing manufacturing establishment to rectify the unfair labor practices of former owners of the establishment.

"It is the employing industry that is sought to be regulated and brought within the corrective and remedial provisions of the Act in the interest of industrial peace." *National Labor Relations Board* v. *Colten*, 105 F. (2d) 179, 183 (C. C. A. 6). It can make little difference to the employees who continue the same work in the same place of business that there has been a change in ownership of the business or in the name of their employer. In large industries many employees have probably never seen all or some of the owners of the business for which they work. It is their immediate supervisors with whom they have their day-to-day contact and whose reactions to their self-organization give them most concern. If the successor to the employer found to have engaged in unfair labor practices does not disturb this normal relation of the employees to their work and to their supervisors, then for all prac-

tical purposes in the eyes of the employees, the business and their employer is, the same as before. The successor of an employer found to have engaged in unfair labor practices occupies a position not unlike that of the owner of a business who, although he has not encouraged, sanctioned or even known of coercive conduct by his supervisory employees, is held legally responsible for their conduct.[15] The test of responsibility is whether the employees might reasonably believe that the supervisors are acting for and on behalf of management, and it can make little difference to the employees whether the same owner or a successor is operating the business if the supervisors who are believed by the employees to be acting for management have not changed. If a change in ownership were to eliminate the force of the injunction, the same superintendents and foremen whose acts led to the original injunction could again engage in unfair labor practices without risking contempt charges. Clearly, ownership should not, in itself, be deemed a "matter of controlling significance from the standpoint of the public interest." *National Labor Relations Board* v. *Adel Clay Products Co.*, 134 F. (2d) 342, 346 (C. C. A. 8). See also *National Labor Relations*

[15] See e. g. *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, 520; *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 599; *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 80.

Board v. *Keystone Freight Lines*, 126 F. (2d) 414 (C. C. A. 10).

Consideration of the continuity of group relationship between employees and supervisory personnel in a business which is sold as a going concern indicates the strong need for giving effect to Board orders even after a change in ownership. Employees must be assured that supervisors who once were part of an anti-union organization are no longer free to continue anti-union conduct. Employees must be assured that members of their group who lost their employment through a discriminatory discharge may resume their place in the group and be made whole for loss in pay. Employees must be assured that employer-sponsored unions cannot be recognized by the new owners. Employees must be assured that the new employer cannot benefit from the former owner's refusals to bargain.

The importance of protecting the employee-employer relationship, regardless of change of ownership, has frequently been recognized by unions and employers in their labor contracts. A number of agreements explicitly state that the agreement is binding on the successors and assigns of the employer and others provide that the employer must use its influence with any successor in order to preserve the existence of the agreement.[16] Indeed, even where the agreement itself

[16] See U. S. Bureau of Labor Statistics, Bull. No. 686, *Union Agreement Provisions* (1942), pp. 211–212; and *Col-*

makes no provision for the extension of its terms to a successor, it is usual for the new owner of a continuing business, operating with the same supervisory and other employees, to recognize the contract which he found in existence when he took over the business as binding upon him." In the interest of industrial peace, neither the stabilized relationships resulting from the fruition of collective bargaining contracts nor the assurances given employees by Board orders should be disturbed merely because of a change in ownership.

The Board's position that its orders should run with the continuing business rests upon its conception of the public interest sought to be protected by the Act. It may be noted, however, that similar principles have occasionally been applied by courts of equity in the protection of private rights. For example, in *United Gilpin Corp.* v. *Wilmore*, 100 Col. 453, 68 P. (2d) 34, an injunction had issued against a mining company, "its agents, employees, representatives, successors and assigns" permanently enjoining them from discharging certain waste products into a stream

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lective Bargaining Contracts, pp. 430–431, 433, published by the Bureau of National Affairs, Inc., of Washington, D. C.

[17] See *Matter of Greater New York Broadcasting Corp.*, 48 N. L. R. B. 718, 726–729; *Order of Railroad Telegraphers* v. *Railway Express Agency, Inc.*, 321 U. S. 342, 343, reversing 137 F. (2d) 46, 48–50 (C. C. A. 5); *Burley* v. *Elgin, J. & E. Ry. Co.*, 140 F. (2d) 488, 489 (C. C. A. 7), pending on certiorari, No. 169, this Term.

which ran over the property of complainants. Later, the mining property was sold under foreclosure and the purchaser sold to another mining company which was in no way connected with the defendant in the injunction suit. The second mining company, although it knew of the injunction, began discharging waste products into the stream. The court, in finding this successor and assign in contempt of its decree, stated (68 P. (2d) at p. 35):

> The history of this litigation leading to the injunctive order clearly discloses the intent to enjoin the doing of a thing, more directly than the restraint of that thing being done by any particular party or parties. In effect, it is a restriction or restraint running with future operations of the property involved.[18]

This Court has, upon several occasions, recognized that the principles applied in the *United Gilpin* case, *supra*, "may be applied in fuller measure in furtherance of the public interest * * * than if any private interests were involved." *Walling* v. *Reuter Co.*, 321 U. S. 671, 674; *Virginian Railway Co.* v. *System Federation*, 300 U. S. 515, 552.[19]

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[18] See also *Aluminum Colors, Inc.* v. *The Empire Plating Co.*, 5 F. Supp. 687 (N. D. Ohio 1933); *G. & C. Merriam Co.* v. *Saalfield*, 190 Fed. 927 (C. C. A. 6).

[19] *Chase National Bank* v. *City of Norwalk*, 291 U. S. 43; *Scott* v. *Donald*, 165 U. S. 107; and *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229, cited by petitioner in its brief

Each change in status or identity of an offending employer usually involves a complicated set of facts which should be carefully investigated and weighed in dealing with the problem of securing compliance with Board orders. Whether the change results in the ownership or operation of the "business" of the offending employer by a successor or assign, and the extent to which such successor or assign should be required to comply with a Board order, are questions of fact "properly to be resolved by the Board on direct resort to it, or by the court if contempt proceedings are instituted." *Southport Co.* v. *National Labor Relations Board*, 315 U. S. 100, 106.[20]

(pp. 7–9), do not support its contention that Board orders cannot properly be directed against successors and assigns. In the *Chase* and *Scott* cases injunctive orders were held improperly directed against persons who neither occupied the position of successor or assign nor were in any way connected with or in confederacy with the defendant. In the *Hitchman* case, an injunction was held to have improperly issued against persons specifically named in the order but upon whom no process had been served. In any event, the Board's authority to effectuate the policies of the Act is not as circumscribed as the powers of equity courts to protect private rights. Cf. *Securities Commission* v. *Chenery Corp.*, 318 U. S. 80.

[20] To like effect, see *Walling* v. *Reuter*, 321 U. S. 671; *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229, 235; *National Labor Relations Board* v. *Hopwood Retinning Co.*, 104 F. 302 (C. C. A. 6); *National Labor Relations Board* v. *Bachelder*, 125 F. (2d) 387, 388 (C. C. A. 7); *National Labor Relations Board* v. *Cleveland-Cliffs Iron Co.*, 133 F. (2d) 295, 302 (C. C. A. 6); *National Labor Relations Board* v. *Gluck Brewing Co.*, 14 L. R. R. 791 (C. C. A. 8); *Bethlehem Steel Co.* v. *National Labor Relations Board*, 120 F. (2d) 641, 650–651 (App. D. C.).

Sometimes subsequent to the issuance of a Board order but prior to its enforcement, the Board receives from the employer an offer to adduce additional evidence for the purpose of showing that it has ceased to operate or that some change in its legal status or ownership has occurred. In such event the Board may reopen the case, receive the additional evidence, and issue such order as it may deem appropriate under the circumstances;[21] or it may seek a decree for the enforcement of its order, then proceed to secure compliance in such manner as the facts may warrant.[22] By proceeding in this manner, much time can be saved in obtaining redress for

[21] See, e. g., *National Labor Relations Board* v. *Timken Silent Automatic Co.*, 114 F. (2d) 449 (C. C. A. 2).

[22] See, e. g., *Southport Co.* v. *National Labor Relations Board*, 315 U. S. 100, where subsequent to this Court's affirmance of a decree of enforcement by the Circuit Court of Appeals for the Fifth Circuit, the Board obtained compliance in full from what the Board determined to be the successor and assign of the offending employer; *National Labor Relations Board* v. *Blackstone Mfg. Co., Inc.*, 123 F. (2d) 633 (C. C. A. 2), where the Board determined that the parent corporation to which the business of Blackstone was transferred was not a successor and where no compliance was obtained; *National Labor Relations Board* v. *Weirton Steel Co.*, 135 F. (2d) 494 (C. C. A. 3), in which contempt proceedings against an alleged successor and assign are now pending; *National Labor Relations Board* v. *Tupelo Garment Co.*, 122 F. (2d) 603 (C. C. A. 5), in which the court disagreed with the Board's contention that certain new corporations were successors of the offending employer and refused to hold the new corporations in contempt of its decree enforcing a Board order.

the unfair labor practices. Moreover, problems created by changes in ownership, whether before or after entry of an enforcement decree, are frequently settled by adjustment or agreement between the parties. The adjustment of these problems through the administrative processes of the Board is an important function of the Board, for it is through such adjustments that employees are assured an expeditious vindication of the rights accorded them under the Act.[23]

The fact that Board orders are directed against successors and assigns, thus putting them on express notice that the orders are meant to bind them to the full extent of the statutory authority of the Board, undoubtedly facilitates the making of these adjustments. The parties, however, need not submit to any determination of their status with which they disagree or to any demand for compliance which they think is unreasonable, for no one but a court may hold them in contempt and the court may act only after the Board institutes contempt proceedings. *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261. Moreover, it is well recognized that

[23] The necessity of a speedy remedy for violations of the Act in order to effectuate its policies was recognized by Congress when it passed the Act. See the Conference Report on the bill which became the Act. (H. Rep. 1371, 74th Cong., 1st Sess., p. 5). See also Section 10 (i) of the Act, which provides that petitions for enforcement or review "shall be heard expeditiously, and if possible within 10 days after they have been docketed."

a court will hold a person in contempt only after receiving "clear and convincing" proof,[24] and even after he has been adjudged in contempt of a decree enforcing a Board order, he is customarily given a reasonable time within which to purge himself by taking the requisite remedial action for compliance before he is penalized.[25]

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[24] *Kansas City Power & Light Co.* v. *National Labor Relations Board*, 137 F. (2d) 77, 80 (C. C. A. 8); *National Labor Relations Board* v. *Tupelo Garment Co.*, 122 F. (2d) 603, 606 (C. C. A. 5).

Except in the *Hopwood* case, *supra*, involving an *alter ego* type of successor, no successor or assign has ever, as yet, been adjudged in contempt of a court decree enforcing a Board order.

[25] The opinion of this Court in the *Southport Petroleum* case, 315 U. S. 100, is not opposed to the construction for which the Board contends. In that case this Court upheld the action of the Circuit Court of Appeals for the Fifth Circuit in denying a petition by Southport, the offending employer, to adduce additional evidence for the purpose of showing a dissolution of Southport subsequent to the Board's order and purchase of its business by an alleged new employer. Southport's allegations did not negate the possibility that the new employer might be merely a disguise of or straw man for Southport. As this Court noted (315 U. S. at 106) "a *bona fide* discontinuance and a true change of ownership" would terminate Southport's duty under the order to reinstate discriminatorily discharged employees, although some liability on its part for back pay would unquestionably exist; but, regardless of any termination of Southport's liability, since the Board's order ran not only against Southport but also against its "officers, agents, successors, and assigns," it still was possible that the Board's order might "yet be the basis—and the indispensable basis—of liability on the part of any of these persons" (p. 107). Because all of the facts regarding the dissolution and trans-

The scope of the decree in the present case

The court below entered a decree enforcing the Board's order, without discussing the question of the scope of the provision here involved (R. 287–291).[26] It is not clear how the "successors and assigns" provision is construed by the Circuit Court of Appeals for the Second Circuit. The only case which sheds light upon the matter is *National Labor Relations Board* v. *Blackstone Mfg. Co.*, 123 F. (2d) 633, 635,[27] in which the court, in an opinion by Judge Learned Hand, refused to delete the provision from its decree of enforcement:

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fer were not before the Court, it could not pass on whether liability actually existed.

This Court thus apparently assumed that the provision of the Board's order making it effective against successors and assigns was proper, but since Southport had not complained of the form of order in so far as it was directed against successors and assigns, the question was not directly before the Court for decision.

[26] The *per curiam* opinion stated merely (R. 289): "The respondent complains of the order in certain other details; but, so far as we find it necessary to take any notice whatever of these, it is enough to refer to our decisions in *National Labor Relations Board* v. *Blackstone Mfg. Co.*, 123 Fed. (2) 633, 635; *National Labor Relations Board* v. *Standard Oil Co.*, 138 Fed. (2) 885, 888."

[27] Cf. *National Labor Relations Board* v. *Hopwood Retinning Co.*, 98 F. (2d) 97 (C. C. A. 2), and *National Labor Relations Board* v. *Timken Silent Automatic Co.*, 114 F. (2d) 449 (C. C. A. 2), both decided prior to the *Blackstone* case. In the *Hopwood* case, the court below set aside the Board's order insofar as it was directed against the Monarch Company, a successor and *alter ego* of Hopwood, on the ground that no charges against Monarch had been filed but it indi-

> In allowing these words to stand we wish to make it clear, however, that we do not hold that a "successor" or an "assign" will be in contempt of our order if it should (even after notice of the order, but without participating with the respondent in any disobedience by it) do exactly those things which the order forbids. In other words, we do not hold that those words impose any liability which would not exist without them.

If this is taken to mean that the court below will enforce the provision only against a "disguised continuance", or *alter ego* of the old employer (within categories (1) and (2), discussed above), this Court, for purposes of the present case, will

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cated that Hopwood might "be required to secure the cooperation of its agent, Monarch" in complying with the Board's order. In contempt proceedings later brought by the Board against both Hopwood and Monarch (104 F. (2d) 302), the court found both parties guilty. In the *Timken* case, the court (with Judge Clark dissenting) dismissed, as to a parent corporation which had agreed to assume and discharge the obligations of Timken, a dissolved corporation found by the Board to have engaged in unfair labor practices. The court apparently refused to hold the parent corporation responsible for remedying the unfair labor practices of its subsidiary because the agreement by the parent corporation to assume and discharge the obligations of its subsidiary did not make "the two corporations one entity in law and that alone is of present importance." However, the court later in the *Blackstone* case, at p. 635, stated that it had in the *Timken* case "left open to the Board to prove that [the parent company] might so participate in future contempts of its subsidiary, the respondent, as to become a party to the subsidiary's disobedience and be punishable for that reason." Cf. *Alemite Mfg. Corp.* v. *Staff*, 42 F. (2d) 832 (C. C. A. 2).

presumably deem it unnecessary to consider the extent to which a Board order, when enforced without limitation, may hold the new owner of a continuing business (category (3), *supra*, pp. 18–27). It is possible, however, that in view of the pointed phraseology employed by Judge Hand, the *Blackstone* case should be regarded as reserving rather than foreclosing the question of liability on the part of a new owner.[28]

On the latter view of the *Blackstone* case, and assuming the Court accepts the substance of our argument, there would seem to be two alternatives open to the Court. (1) If the Court is satisfied that "successors and assigns" may appropriately be used to define the obligations of the bad faith successor or assign or *alter ego*, the Court might reserve, as did the court below, the question of liability of a so-called good faith successor or assign. In this connection, it may be noted that the petitioner requested neither the Board nor the court below to clarify this provision. (2) If the Court should be of the opinion that the "successors and assigns" provision should be more precisely defined, we submit that the construction made by the Board, as stated in

[28] The Board having exercised its full statutory power to hold successors and assigns, this latter view of the *Blackstone* case leaves open the power of the Board in this regard and the consequent scope of the decree as applied to new owners. Since the determination of this question does not call into play the exercise of judicial discretion but is rather one of statutory power, it would seem necessarily to be before the Court on the present certiorari.

this brief, should be accepted by this Court. The holding of *J. I. Case Co.* v. *Labor Board*, 321 U. S. 332, 341, that "Questions of construction had better be ironed out before enforcement orders issue than upon contempt proceedings * * *" would seem to point to this disposition of the case, and for the reasons there stated, we believe this the preferable alternative. Whatever further doubts may be inherent in the form of the provision may be resolved in an appropriate proceeding for modification or clarification of the order and decree, whenever the question should become important in a practical sense. So far as the present case is concerned, the decisive consideration would seem to be that no circumstances have arisen which call the scope of the provision into question.

CONCLUSION

For the reasons set forth, we respectfully submit that the Board's practice of directing its orders against the successors and assigns of an offending employer, as well as against the employer and its officers and agents, is a sound exercise of the broad administrative discretion given the Board under the Act to prevent and

remedy unfair labor practices, and that the court below did not err in this case in sustaining the Board's order in that respect.

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DECEMBER 1944.

APPENDIX

National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*):

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce * * *.

* * * * *

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor

practice (listed in section 8) affecting commerce. * * *

* * * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

U. S. GOVERNMENT PRINTING OFFICE : 1944

SUPREME COURT OF THE UNITED STATES.

No. 86.—October Term, 1944.

Regal Knitwear Company, Petitioner, *vs.* National Labor Relations Board.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[January 29, 1945.]

Mr. Justice Jackson delivered the opinion of the Court.

The National Labor Relations Board, after appropriate proceedings, issued a cease and desist order against the petitioner, 49 N. L. R. B. 560, and thereafter obtained from the Circuit Court of Appeals for the Second Circuit an order for its enforcement. 140 F. 2d 746. We granted certiorari, limited to a single question on which there was a conflict in practice between different circuits. 323 U. S. —. The Board has followed the formula which orders not only a particular respondent, but also "its officers, agents, successors and assigns" to cease and desist. The question is whether enforcement will be granted without deleting "successors and assigns" from those enjoined. The Circuit Court of Appeal for the First, Second, Third, Fourth, and Eighth Circuits, and the Court of Appeals for the District of Columbia have upheld the authority of the Board to include such a provision.[1] In some of these cases change of ownership was shown to be probable and in other cases there was no such proof. The Second Circuit, in refusing to delete the provision, said: "In allowing these words to stand we wish to make it clear, however, that we do not hold that a 'successor' or an 'assign' will be in contempt of our order if it should (even after notice of the order, but without participating with the respondent in any disobedience by it) do exactly those things which the order

[1] National Labor Relations Board *v.* Brezner Tanning Co., 141 F. 2d 62, 65 (C. C. A. 1st); National Labor Relations Board *v.* Blackstone Mfg. Co., 123 F. 2d 633, 635 (C. C. A. 2d); National Labor Relations Board *v.* Weirton Steel Co., 135 F. 2d 494, 498-99 (C. C. A. 3d); National Labor Relations Board *v.* Landis Tool Co., 15 L. R. R. 183, 185 (C. C. A. 3d); National Labor Relations Board *v.* Jac. Feinberg Hosiery Mill, Inc., 134 F. 2d 620 (C. C. A. 4th); National Labor Relations Board *v.* Glusk Brewing Co., 14 L. R. R. 791, 795 (C. C. A. 8th); Bethlehem Steel Co. *v.* National Labor Relations Board, 120 F. 2d 641, 650-51 (App. D. C.).

forbids. In other words, we do not hold that those words impose any liability which would not exist without them." *National Labor Relations Board* v. *Blackstone Mfg. Co.*, 123 F. 2d 633, 635; see also *Bethlehem Steel Co.* v. *National Labor Relations Board*, 120 F. 2d 641, 650-51 (App. D. C.). The Circuit Court of Appeals for the Seventh Circuit, on the other hand, consistently eliminates the provision as to successors and assigns from the order,[2] but recognizes that successors or assigns under some circumstances are bound by the Board's order, even without the words.[3]

When one court of appeals strikes out the provision but says its absence may in some circumstances have the same effect as if it were there, and another court of appeals approves the provision but says its presence may have no more effect than if it were out, there is more than a faint suggestion that the conflict is over semantics rather than over practical realities.

The formula that includes successors and assigns, among others, is one probably borrowed from the jargon of conveyancing. Doubtless these words often are used, not out of consideration of their appropriateness, but because of their familiarity. Courts of equity sometimes have used this formula in their decrees.[4] Before the enactment of the Labor Relations Act the Federal Trade Commission issued orders containing these familiar provisions.[5] The Securities and Exchange Commission has done the same.[6] The Bituminous Coal Division of the Department of the Interior does likewise.[7] The National Labor Relations Board has

[2] National Labor Relations Board v. Bachelder, 125 F. 2d 387, 388; National Labor Relations Board v. Stone, 125 F. 2d 752, 757. The Sixth Circuit has also refused in one case to include the phrase. National Labor Relations Board v. Cleveland-Cliffs Iron Co., 133 F. 2d 295, 302.

[3] See also In re Lennon, 166 U. S. 548; International Brotherhood of Teamsters v. Keystone Freight Lines, Inc., 123 F. 2d 326, 329; National Labor Relations Board v. Cleveland-Cliffs Iron Co., 133 F. 2d 295, 302.

[4] See United States v. Pullman Co., Civil Action No. 994, E. D. Pa. 1944; United States v. Vehicular Parking, Ltd., Civil Action No. 259, D. Del. 1944; Aluminum Colors Inc. v. Empire Plating Co., 5 F. Supp. 687; United States v. Great Lakes Towing Co., 1 Decrees and Judgments in Federal Antitrust Cases, 253-54 (N. D. Ohio, 1915); United Gilpin Corp. v. Wilmore, 100 Colo. 453, 456, 68 P. 2d 34, 35.

[5] Matter of Superior Woolen Mills, 8 F. T. C. 283, 288 (1924); Matter of American Snuff Co., 11 F. T. C. 144, 160 (1927); Matter of The Sherwin-Williams Co., 36 F. T. C. 25, 72, 74 (1943).

[6] Securities and Exchange Commission v. Aldrich Blake, Inc., 1 S. E. C. Jud. Dec. 19, 21.

[7] Matter of Cove Hill Coal Co., 7 F. R. 7572, 7574; Matter of Waltrip & Sons, 7 F. R. 7864.

employed this formula consistently since 1937,[8] and some state labor boards have followed the example.[9] Not only have circuit courts of appeals, except of the Seventh Circuit, generally enforced orders containing this provision, but this Court has several times done so. *Southport Petroleum Co.* v. *National Labor Relations Board*, 315 U. S. 100, 106, note 6.[10]

The dearth of cases in which actual controversies have been precipitated by this more general than discriminating use of this ritual indicates that its significance both for good and ill is greater in anticipation than in retrospect.

Administrative agencies have considerable latitude to shape their remedies within the scope of their statutory authority and, where the infirmity is inadequacy of findings to show appropriateness of the choice made in the particular case, are ordinarily entitled to have the case remanded for further consideration. *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 194; *Addison* v. *Holly Hill Fruit Products, Inc.*, 322 U. S. 607, 616. The courts, nevertheless, may not grant an enforcement order or injunction so broad as to make punishable the conduct of persons who act independently and whose rights have not been adjudged according to law. *Chase National Bank* v. *Norwalk*, 291 U. S. 431, 436-37; *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229, 234; *Scott* v. *Donald*, 165 U. S. 107, 117; *Alemite Mfg Corp* v. *Staff*, 42 F. 2d 832.

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[8] Matter of Hill Bus Co., 2 N. L. R. B. 781, 800.

[9] Matter of The Great Atlantic & Pacific Tea Co., Case No. CU-333, New York State Labor Relations Board; Matter of W. T. Grant Co., Case No. 82, Pennsylvania Labor Relations Board.

[10] Citing Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197, enforcing, as modified, 4 N. L. R. B. 71, 108; National Labor Relations Board v. Newport News Shipbuilding & Dry Dock Co., 308 U. S. 241, enforcing 8 N. L. R. B. 866, 877; National Labor Relations Board v. Falk Corp., 308 U. S. 453, enforcing 6 N. L. R. B. 654, 666; National Labor Relations Board v. Waterman Steamship Corp., 309 U. S. 206, enforcing 7 N. L. R. B. 237, 252; National Labor Relations Board v. Link-Belt Co., 311 U. S. 584, enforcing 12 N. L. R. B. 854, 883; Phelps Dodge Corp. v. National Labor Relations Board, 313 U. S. 177, enforcing, as modified, and remanding 19 N. L. R. B. 547, 603.

It is suggested, at least inferentially, that National Labor Relations Board v. Express Publishing Co., 312 U. S. 426, is authority against the position of the Court in the case at bar. However, the order there under review contained these same words. Matter of Express Publishing Co., 13 N. L. R. B. 1212, 1226. While this Court limited the enforcement order in certain other respects it did not strike the words "successors and assigns." The issue was not passed on, but its very absence from a case concerning permissible breadth of orders suggests the innocuous character of the provision as compared with that passed on in the Express case.

The Federal Rules of Civil Procedure provide that: "Every order granting an injunction and every restraining order . . . is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise."[11] This is derived from the common-law doctrine that a decree of injunction not only binds the parties defendant but also those identified with them in interest, in "privity" with them, represented by them, or subject to their control. In essence it is that defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding.

The term "successors and assigns" in an enforcement order of course may not enlarge its scope beyond that defined by the Federal Rules of Civil Procedure. Successors and assigns may, however, be instrumentalities through which defendant seeks to evade an order or may come within the description of persons in active concert or participation with them in the violation of an injunction. If they are, by that fact they are brought within scope of contempt proceedings by the rules of civil procedure. We have indicated that Labor Board orders are binding upon successors and assigns who operate as "merely a disguised continuance of the old employer." *Southport Petroleum Co.* v. *Labor Board*, 315 U. S. at 106. We have also said of an injunction to restrain violation of the Fair Labor Standards Act, which is somewhat analogous to Labor Board orders, that "Not only is such an injunction enforcible by contempt proceedings against the corporation, its agents and officers and those individuals associated with it in the conduct of its business, but it may also, in appropriate circumstances, be enforced against those to whom the business may have been transferred whether as a means of evading the judgment or for other reasons." *Wadling* v. *Reuter*, 321 U. S. 671, 674. In both of these cases the reference is not merely to succession, but to a relation between the defendant and the successor which might of itself establish liability within the terms of Rule 65.

We do not undertake to decide whether or under what circumstances any kind of successor or assign will be liable for violation of a Labor Board order. It is true that we have said that "Ques-

[11] Rule 65(d), which is derived from § 19 of the Clayton Act, 38 Stat. 738; 28 U. S. C. §383.

tions of construction had better be ironed out before enforcement orders issue than upon contempt proceedings." (*J. I. Case Co.* v. *National Labor Relations Board*, 321 U. S. 332, 341). But it is apparent from Rule 65, and from the views of one circuit court of appeals as to the narrow effect of the words in the order and of another as to the broad effect of the order without the words, that whether one brings himself in contempt as a "successor or assign" depends on an appraisal of his relations and behavior and not upon mere construction of terms of the order. If defendants enter upon transactions which raise doubts as to the applicability of the injunction, they may petition the court granting it for a modification or construction of the order. Cf. *New Jersey* v. *New York City*, 296 U. S. 259. While such relief would be in the sound discretion of the court, we think courts would not be apt to withhold a clarification in the light of a concrete situation that left parties or "successors and assigns" in the dark as to their duty toward the court. Enforcement orders are issued to effectuate the purposes of the Act, not for the entrapment of parties, and courts no less than parties desire to avoid unwitting contempts as well as to punish deliberate ones.

No concrete case is before us. We have here an abstract controversy over the use of these words, and it is as sterile as abstract controversies usually are. The employer objects to the words of the order merely as words. They do not enlarge its own obligation, and if it complies with the order, little by way of obligation could be passed to a successor or assign by the order that is not in any event imposed by statute. The Board is not here attempting to reach or to hold anyone in contempt by virtue of such orders. No successor or assign appears before us complaining that these words put him in jeopardy. No one can be punished for contempt because of these words until after a judicial hearing, in which their operation could be determined on a concrete set of facts. All that is before us is the question whether we will hold abstractly that this provision is an illegal one to include in a cease and desist order of the Labor Board or an enforcement order of the Court.

Whether it is wise that an order attempt to define its own effect on others than parties to the action when the law has already done so is not for us to say. We cannot say that "successors and assigns" as well as "officers and agents" may not under some circumstances be among those reached by the order within the scope

of Rule 65 and hence cannot say that it is not a permissible provision.

Affirmed.

Mr. Chief Justice STONE, dissenting, with whom Mr. Justice ROBERTS and Mr. Justice REED concur.

An injunction is a continuing threat to those named as subject to it, of the pains of contempt proceedings if they disobey its provisions. The opinion of the Court recognizes that the present injunction running against the employer's "successors and assigns" purports to include within its sweep some who are not subject to its command and is thus a threat to those over whom the Court has no authority. The opinion also admits that the persons who are bound by the present decree would be as effectively bound if the decree were to omit the words "successors and assigns." See *Walling* v. *Reuter Co.*, 321 U. S. 671, 674-675, and cases cited.

It has long been deemed to be an abuse of power for a federal court to enjoin practices in which a defendant has not engaged and which are unrelated to those which may be properly enjoined. See *Labor Board* v. *Express Publishing Co.*, 312 U. S. 426, and cases cited. To me it seems no less a misuse of authority for a court, as well as for the Labor Board itself, to threaten those who are not subject to its command. This is the more so where the tendency of the threat is to inflict an unauthorized penalty on the employer by deterring third persons from dealing with him to acquire his property and business, in circumstances in which that may lawfully be done.

That there have been numerous cases before this Court where the Board's order has not been challenged in this respect, is significant only as showing how extensive the abuse has become and how ready employers and the lower courts have been to acquiesce in threatened wrong when the injury seemed not to be immediate. But these are not reasons for our acquiescence, when the question is brought to us for decision for the first time. It is no part of the function of the Board or of courts to make unwarranted threats against suitors or innocent third persons. Such misleading and unwarranted use of the phrase should be avoided, either by striking it from the decree or so qualifying it as to designate the class of "successors and assigns" to whom it may be lawfully applied. Cf. *Southport Co.* v. *Labor Board*, 315 U. S. 100, 107.